



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.3495 of 2013

and

Crl.M.P.(MD).Nos.1 & 2 of 2013

1.Thamil Kutty@ Muthu Kutty
2.Mahesh
3.John Williams
4.Jesu Raj
5.Justin
6.Manikandan
7.Perumal
8.Ranjit
9.Naseer
10.Vetrivel
11.Mahesh
12.Johnson
13.Chinnadurai
14.Selvakumari
15.Indira

.. Petitioners/Accused Nos.1 to 15

-Vs-

The State rep. by
The Inspector of Police,
Thiruchendur Police Station,
Tuticorin District.
(Crime No.182 of 2012)

.. Respondent/Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in S.T.C.No.262 of 2013, on the file of the learned Judicial Magistrate, Thiruchendur and quash the same.

For Petitioners : Mr.A.Robinson

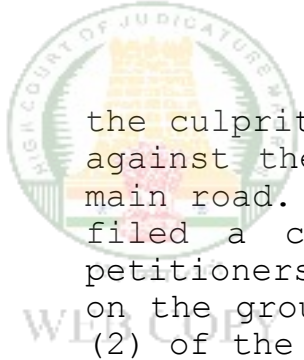
For Respondent : Mr.M.Murugan
for Mr.K.Anbarasan
Government Advocate (Crl.side)

O R D E R

The petitioners filed this petition under Section 482 of Cr.P.C, 1973, to quash the proceedings in S.T.C.No.262 of 2013, on the file the learned Judicial Magistrate, Thiruchendur.

2. The brief facts of the case are as follows:

Since there was a suspicious death of the local resident, on 17.04.2012, the petitioners and some of the residents were assembled at Tiruchendur-Tirunelveli main road, for demanding action against



the culprit, who committed the murder. Thereby, they started protest against the inaction of the police and stopped the traffic in the main road. On seeing the protest, the Village Administrative Officer filed a compliant before the respondent police implicating the petitioners for the offence under Sections 147, 341 and 198 of IPC., on the ground that there was a promulgation caused under Section 30 (2) of the City Police Act. When the promulgation order is in force, the petitioners assembled in the particular place against law is violation of Section 188 of IPC. After receipt of the complaint, the respondent police registered a case against the petitioners. Thereafter, investigation was completed and charge sheet has been filed by the respondent police before the learned Judicial Magistrate, Tiruchendur. Thereafter, the learned Magistrate has taken the charge sheet on file as S.T.C.No.262 of 2013, which is impugned in this Criminal Original Petition.

3. The learned counsel for the petitioners would submit that the petitioners peacefully assembled in the main road in order to demand police action against the culprit, who committed murder in the locality. Mere assembling in a particular place will not amount to create law and order problem. In the present case, the complaint was filed by the Village Administrative Officer, who is not competent to file a complaint under Section 195 Cr.P.C., which makes it clear that no Court shall take cognizance, if offence punishable under Section 172 to 188 of IPC including abatement or attempted to commit such offence or of any criminal conspiracy to commit such offence, except on the compliant in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, the Village Administrative Officer neither coming under the category concerned public servant or administratively subordinate to him.

4. In view of the above, the compliant filed by the Village Administrative Officer, who is incompetent to file, consequent investigation conducted by the respondent police and filing of charge sheet before the Court concerned are bad in law. In support of his contention, the learned counsel for the petitioners relied upon a decision in the case of *Murugesan and others vs. State of Tamilnadu*, reported in 1989 Cr1.LJ 1833, at paragraph No.6, which reads as follows:

"6. In this connection a useful reference could be made to the observations of the Supreme Court in Durgacharan Nail v. State of Orissa, AIR 1966 SC 1775:(1996 Cri LJ 1491), which run as follows (para8):

"We have expressed the view that S.195 Cr.P.C. does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section but we must point out that the provisions of S.195 cannot be evaded by resorting to devices or camouflage. For



instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does. On the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the I.P.C. though in truth and substance the offence falls in the category of sections mentioned in S.195 Cr.P.C. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S.195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it..."

In view of the above observations of the Supreme Court, it is crystal clear that the provision of S.195 Cr.P.C cannot be evaded by resorting to devices or camouflage. The case on hand is one resorting to device or camouflage of clubbing other cognizable offences, actually not made out along with the offence under S.188 IPC so as to evade the mandatory provisions of S.195 Cr.P.C requiring a specific complaint to be given by a public servant concerned. In the instant case, admittedly no written complaint had been given by the Deputy Superintendent of Police, Chidambaram, who is stated to have issued the order of promulgation under S. 30(2) of the Police Act."

5. Per contra, the learned Government Advocate (Crl.side) appearing for the State would submit that the Village Administrative Officer is a public servant, who is competent to file a complaint before the respondent police. In the present case, the petitioner violated the promulgation order issued under Section 30(2) of the City Police Act.

6. I have considered the submissions made by the learned counsel for the petitioners as well as the learned Government Advocate (Crl.side) appearing for the State and perused the materials available on record.

7. On careful perusal of Section 195 of Cr.P.C., it is clear that no Court shall take cognizance of any offence punishable under Section 172 to 188 of IPC. The particular penal Sections 172 to 188 of IPC were incorporated in Chapter-X of the Indian Penal Code, which clearly describes contempt of lawful authority of public servants.

<https://hcservices.ecourts.gov.in/hcservices/> But in the present case, the petitioners committed offence punishable under Section 188 of IPC, which describes the disobedience to order duly promulgated by public servant. So



according to Section 188 of IPC, if any person violated the promulgation order passed by the public servant, it attracts offence under Section 188 of IPC. In the present case, the petitioners were implicated under Section 188 of IPC, since the petitioners violated the promulgation order issued by the Deputy Superintendent of Police under Section 30(2) of the City Police Act. On careful perusal of Section 195 of Cr.P.C shows that the complaint shall be accepted that if the complaint writing by the public servant concerned or of some other public servants to whom he is administratively subordinate. In this case, the Village Administrative Officer is no way connected with the promulgation order issued by the Law Enforcing Agency, under Section 30(2) of the City Police Act, which is not coming under the category of subordinate to him or concerned persons.

9. In view of the above, the Village Administrative Officer is not the competent person to give a complaint before the respondent police. On perusal of the decision cited supra and the submissions made by the learned counsel for the petitioners, I am inclined to quash the charge sheet in S.T.C.No.262 of 2013, on the file of the learned Judicial Magistrate, Tiruchendur. Accordingly, the charge sheet in S.T.C.No.262 of 2013, on the file of the learned Judicial Magistrate, Tiruchendur, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Protocol)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Thiruchendur.

2. The Inspector of Police,
Thiruchendur Police Station,
Tuticorin District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.ROBINSON,Advocate,SR.92742

CrI.O.P. (MD)No.3495 of 2013
13.12.2017

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