

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No. 24173 of 2017 and
Crl.M.P.Nos.13834 & 13985 of 2017

Pastor Samuel

.. Petitioner

Vs.

The State,
Represented by its Inspector of Police,
S-15, Selaiyur Police Station,
Selaiyur, Tambaram,
Chennai-600 059
(FIR1545 of 2017)

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records of the proceedings in FIR 1545 of 2017 on the file of the respondent Police and to quash the same as illegal.

For Petitioner : Mr.Govind Chandrasekhar
For Respondent : Mr.Kritika Kamal.P
Government Advocate (Crl.Side)

O R D E R

The petitioner has been alleged as an accused for having committed the offence punishable under Sections 143, 188, 353 IPC.

2. The case of the prosecution is that the petitioner herein, has been arrayed as second accused and he along with other accused entered into the police station on 11.09.2017 at 8.00 p.m. and had obstructed the routine work in the Police Station since they were more than five persons, they have been arrested for having committed the offence punishable under Sections 143, 188, 353 IPC.

3. The learned counsel appearing for the petitioner submitted that the FIR is a clear abuse of process of law. According to him, ingredients under sections 188, 353 and 143 IPC have not been made out at all.

4. In so far as Section 353 IPC is concerned, there was neither assault or criminal force in the police station and as such the basic ingredients Section 353 IPC is completely absent.

5. Likewise, Section 143 IPC, also cannot be said to have been made out, since there was no unlawful assembly inside the Police Station. What seems to have transpired from the averments made in the complaint is that the petitioner along with others, had visited the Police Station and questioned the action of the Police.

6. The common object of the petitioner and others, while entering into the Police Station was not to resist or to obstruct the duties of the Police Officers. Likewise, they did not indulge in any criminal activities nor it can be said that the petitioner along with others constituted any unlawful assembly.

7. At this juncture, the learned Government Advocate submitted that the offence under Section 186 IPC could be made from the complaint.

8. In view of my finding that the offence under Section 143 IPC has not been made out against the petitioner, the respondent police are not empowered to register the case under Section 186, since the offence is a non-cognizable offence.

9. In so far as Section 188 IPC is concerned, the law is well settled that under Section 195 Cr.P.C, no court shall cognizance of an offence punishable under Section 188 of IPC without the written complaint of the public servant concerned and as such it was totally improper on the part of the respondent police to have taken the complaint on file.

10. In the result, I do not find any jurisdiction as to how the respondent police can proceed with the investigation, in the absence of any cognizable offence made out and as such, the investigation in FIR 1545 of 2017 dated 11.10.2017 on the file of the respondent Police stands quashed and accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

msm

To

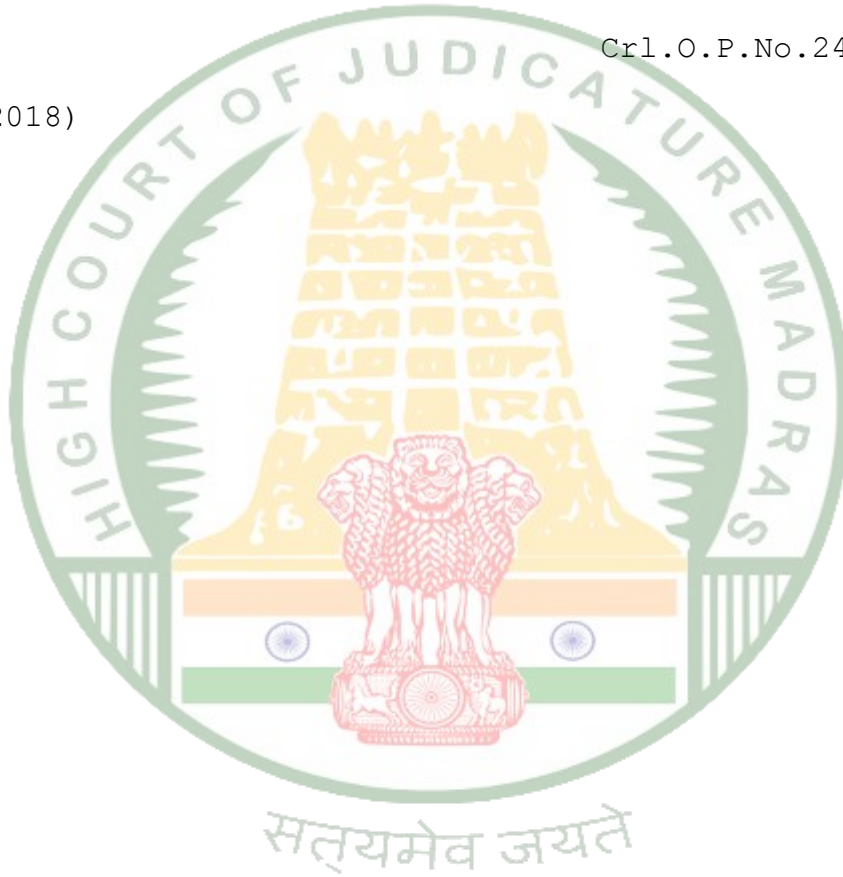
1. The Inspector of Police,
S-15, Selaiyur Police Station,
Selaiyur, Tambaram,
Chennai- 600 059.
(FIR No.1545 of 2017).

2. The Public Prosecutor,
High Court, Madras

+1cc to Mr.GOVIND CHANDRASEKHAR, Advocate, S.R.No. 10455

Cr1.O.P.No.24173 of 2017

TR(20/03/2018)



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