



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.04.2018

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The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.17768 of 2017

M.Balaji

.. Petitioner

Vs

1 The Principal Home Secretary
Government of Tamilnadu
Secretariat
Chennai - 600 009.

2 The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai - 600 004.

3 The Director
Director of Prosecution
No.5, Kamaraj Salai
Chennai - 600 005.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Mandamus to direct the respondents to ensure that in future not to register the First Information Report and the Charge Sheet or Final Report under Sections 172 to 188 IPC and save the public money, save the time of Police Officials and save the precious time of Courts.

For Petitioner : Mr.K.Suresh Babu

For Respondents : Mr.T.N.Rajagopalan
Government Pleader

ORDER

(Made by Ms.Indira Banerjee, Chief Justice)

This writ petition, by way of public interest litigation, has been filed by a practising advocate of this Court seeking a writ of mandamus or an analogous order directing the respondents to ensure that no first



information report or charge sheet or final report is registered under Sections 172 to 188 of the Indian Penal Code.

2. Our attention has been drawn to Section 195 of the Criminal Procedure Code, which is set out herein below for convenience:

"Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance-

(a) (i) If any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that court is subordinate.



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(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the court; and upon its receipt by the court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from appeal able decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situate:

Provided that-

(a) Where appeals lie to more than one court, the Appellate Court of inferior jurisdiction shall be the court to which such court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

3. Under Section 195 of the Criminal Procedure Code, no Court is to take cognizance of an offence punishable under Section 172 to 188 of the Indian Penal Code or of any abetment of, or attempt to commit such offences punishable under those sections, or of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.



4. If any Court takes cognizance of an offence in breach of Section 195 of the Criminal Procedure Code, the accused has an efficacious alternative remedy of filing a criminal revisional application for quashing of proceedings.

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5. The petitioner has also sought orders on the police authorities not to register First Information Report on the contention that the offences under the aforesaid sections are non-cognizable. We find that at least offence under Section 174-A of the Indian Penal Code is a cognizable non bailable offence punishable with imprisonment for three years or with fine or with both and in a case where declaration has been made under sub-section 4 to Section 82 of the Code pronouncing a person as a proclaimed offender, the offence is punishable for imprisonment for seven years and fine.

6. That apart, Section 155 of the Criminal Procedure Code provides that when information is given to an officer incharge of a police station of the commission within the limits of such station of a non cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate. No police officer is to investigate a non cognizable case without the order of the Magistrate, having power to try such case or commit the case for trial. A cognizable case can also be investigated into with the order of the Magistrate having power to try such case or to commit the case for trial.

7. Our attention has also been drawn to the definition of "complaint" in Section 2(d) of the Criminal Procedure Code. The definition reads

"Section 2. Definitions. In this Code, unless the context otherwise requires:

(a) to (c)

(d) 'Complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report".

8. The explanation to Section 2(d) of the Criminal Procedure Code reads "A report made by a police officer in a case which discloses, after investigation, the commission of a non cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant".

9. In *Saloni Arora v. State (NCT of Delhi)*, reported in (2017) 3 SCC 286, the Supreme Court held:

"10. It is apposite to reproduce the law laid down



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by this Court in Daulat Ram v. State of Punjab, AIR 1962 SC 1206 which reads as under:

'There is an absolute bar against the court taking seisin of the case under Section 182 IPC except in the manner provided by Section 195 CrPC.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under Section 182 is complete when a person moves the public servant for action. Where a person reports to a Tahsildar to take action on averment of certain facts, believing that the Tahsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tahsildar, as the public servant concerned under Section 182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under Section 182 without the Tahsildar's complaint in writing is, therefore, without jurisdiction ab initio.'

11. It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in Daulat Ram quoted above."

10. The aforesaid judgment was rendered in the context of a criminal revisional proceedings. We are of the view that such blanket orders as prayed for, cannot be issued and certainly not in a public interest litigation. The individual accused persons have an alternative remedy of filing a criminal revisional application for quashing of the proceedings on the ground of breach of the mandatory provisions of law.

11. So far as the police authorities are concerned, they are not even under the general superintendence of the High Court.



Their actions may be subjected to judicial scrutiny by the High Court in exercise of its power of judicial review. Orders as prayed for by the petitioner, therefore, cannot be granted.

12. We would request the Tamil Nadu State Judicial Academy to initiate appropriate training programmes for the Magistrates in relation to offences under Sections 172 to 188 of the Indian Penal Code.

The writ petition is disposed of accordingly. No costs. Consequently, W.M.P.No.35085 of 2017 are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To:

- 1 The Principal Home Secretary
Government of Tamilnadu
Secretariat
Chennai - 600 009.
- 2 The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai - 600 004.
- 3 The Director
Director of Prosecution
No.5, Kamaraj Salai
Chennai - 600 005.
- 4 The Director
Tamil Nadu State Judicial Academy
Greenways Road
Chennai - 600 028.

+1cc to Mr.K.Eswar, Advocate Sr.No.26135
+1cc to Government Pleader sR.no.26263

CNR(CO)
sm:15.5.2018

W.P.No.17768 of 2017