



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 22.10.2018

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.11806 of 2015

and

M.P.(MD)No.1 of 2015

M.Ebenezar

... Petitioner/Accused

Vs.

1.The Inspector of Police

Thoothukudi South Police Station

Thoothukudi

...1st Respondent/Complainant

2.R.A.Joseph Kingston

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to impugned F.I.R.No.501 of 2015 on the file of the first respondent herein and quash the same.

For Petitioner

: Mr.Veerakathiravan

For R1

: Mr.A.P.G.Ohm Chairma Prabhu

Government Advocate (Crl.Side)

For R2

: Mr.R.Vijayakumar

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.501 of 2015 on the file of the first respondent police for the offences under Sections 188 and 290 I.P.C r/w Section 15 of Environmental Protection Act, r/w Rule 5 & 6 of Noise Pollution Rules.

2.The case of the prosecution is that in the Benthagosthe Mission at Door No.22/8, Roach Colony, Thoothukudi, the petitioner and others assembled and caused nuisance to the general public by raising their voice and also with musical system. It is violation of the Government Order. Further, it is alleged that even after the order passed by this Court that not to use the building at Door No.22/8, except for residential purpose, the petitioner and others unlawfully assembled and caused disturbance and nuisance



to the general public by creating so many noises. Hence, the charge under Sections 188 and 290 I.P.C r/w Section 15 of Environmental Protection Act, r/w Rule 5 & 6 of Noise Pollution Rules.

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3.The learned counsel for the petitioner would submit that the first respondent is not a competent person to register the case under Section 188 I.P.C, when there is a specific bar under Section 195(1) Cr.P.C that except the person, who passed promulgation order, lodged a complaint, the other complaint cannot be entertained. Further, he would submit that the second respondent is not the competent person to set the criminal law into motion. He has no locus to lodge a complaint for the offence under Section 290 I.P.C. Insofar as the offence under Section 15 of the Environmental Protection Act is concerned, Section 19 of the Act specifically provides that only the State or Central Government has alone got authority to lodge a complaint for violation of the provisions under Section 15 of the said Act. Therefore, the F.I.R is not at all sustainable and he prays to quash the F.I.R.

4.Per contra, the learned Government Advocate (Crl.Side) would submit that though the order passed by this Court in W.P.(MD). No.9926 of 2015, thereby, prohibited to use the building at Door No.22/8 of Benthagosthe Mission, except for residential purpose, the petitioner and others used it as a Benthagosthe Mission and created hindrance to the general public. Further, he would submit that there is a clear bar under Environmental Protection Act and the petitioner and others had violated the said provisions. Therefore, they are liable to be prosecuted for the offences registered as against the petitioner. Hence, he prays for dismissal of the quash petition.

5.Heard the learned counsel appearing on either side.

6.Admittedly, the second respondent is the complainant and on his complaint, the FIR has been registered for the offences under Sections 188 and 290 I.P.C r/w Section 15 of Environmental Protection Act, r/w Rule 5 & 6 of Noise Pollution Rules as against the petitioner. Though there is a prohibition order passed by the Tahsildhar and directed by this Court in W.P.(MD).No.9926 of 2015, it was not at all published in any newspaper. Further, to register the case for the offence under Section 188 I.P.C, the competent authority has to lodge a complaint. In this regard, it is relevant to extract Section 195(1) (a) of the Criminal Procedure Code, 1973 :-

"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) of 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;..."

7. The learned counsel for the petitioner has relied upon the Judgment of this Court in a batch of quash petitions, this Court has held in Paragraph-25, as follows:-

"...25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned;

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C., will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C., and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order, and being directed by such order to abstain from doing certain act or to take certain order with certain property in his



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possession and under his management, has disobeyed; and
iv) that such disobedience causes or tends to cause;

- (a) obstruction, annoyance or risk of it to any person lawfully employed; or
- (b) danger to human life, health or safety; or
- (c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a final report will not become void ab initio insofar as offences other than Sections 172 to 188 of IPC and a final report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1) (a) (i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector of the various zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1) (a) (i) of Cr.P.C.

Therefore, the second respondent is not the competent person to lodge a complaint to register the case for the offence under Section 188 I.P.C.

8. Insofar as the offence under Section 290 I.P.C is concerned, the second respondent is not the competent person to set the criminal law into motion. The offence under Section 15 of the Environmental Protection Act is concerned, Section 19 of the said Act specifically provides that only the State or Central Government has alone competent to lodge a complaint for violation of the provisions under Section 15 of the said Act. Here, admittedly, the second respondent is the complainant. Therefore,



the offences under Section 290 I.P.C as well Section 15 of the Environmental Protection Act are not sustainable.

9. Insofar as the other offences are concerned, it is relevant to rely upon Section 19 of the Environment (Protection) Act, 1986 read as follows:

"19. Cognizance of offences: No Court shall take cognizance of any offence under this Act except on a complaint made by

(a) the Central Government or any authority or officer authorised in this behalf by that Government ; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid"

10. It is also relevant to rely upon Rule 7 of the Noise Pollution (Regulation and Control), Rules, 2000, read as follows:

"7. Complaints to be made to the authority:

(1) A person may, if the noise level exceeds the ambient noise standards by 10 dB (A) or more given in the corresponding columns against any area/zone (or, if there is a violation of any provision of these rules regarding restrictions imposed during night time) make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force"

11. Considering all these aspects, the second respondent is not the competent authority to lodge a complaint as against the petitioner. Therefore, the FIR is not at all sustainable as against the petitioner in the above said reasons. Accordingly, this Criminal Original Petition is allowed and the First information Report in Crime No.501 of 2015 on the file of the first respondent herein is quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS-III)



To

1. The Inspector of Police
Thoothukudi South Police Station
Thoothukudi

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1cc to M/s.Veera Associates, Advocate, Sr.No.91100.

+1cc to Mr.R.Vijayakumar, Advocate, Sr.No.91065.

CrI.O.P. (MD) No.11806 of 2015
and
M.P. (MD) No.1 of 2015
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