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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.10.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.13302 of 2015
and
M.P. (MD) .No.1 of 2015

M.Vijayakumar : Petitioner/Accused No.3

Vs.

1.State rep. By
The Sub-Inspector of Police,
Kombai Police Station,
Theni District.
(Crime No.247 of 2010)

: 1st Respondent/Complainant

2.P.Thulasiram : 2nd Respondent/De-facto complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the C.C.No.18 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinayakanur and quash the same.

For Petitioner : Mr.D.Anbarasu

For R-1 : Mr.APG.Ohm Chairma Prabhu
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition is filed to quash the charge sheet in C.C.No.18 of 2011, on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinayakanur in Crime No.247 of 2010 on the file of the respondent police as against the petitioner herein, for the offences punishable under Sections 147, 341 and 188 of IPC.

2. The case of the prosecution is that the de-facto complainant one P.Thulasiram, who is working as Village Administrative Officer, at Pannaipuram, Theni District, alleged that on 30.08.2010, while the 2nd respondent went to the Thevaram Main Road, he saw the petitioner and others were made a hunger strike in the main road itself without got any prior permission with regard to the suspicious death of one Rajeswaran, who was studied at Government Higher Secondary School, Pannaipuram, during the school hours and further they mentioned to arrest the teacher who are all involving the said student's death. Hence, a case has been registered against the petitioner and other accused persons.



3. The learned counsel for the petitioner would submit that the petitioner said to have unlawfully assembled and agitated against the teacher working in Government Higher Secondary School, Pannaipuram, and therefore by virtue of Section 195(1) of the Criminal Procedure Code, no Court can take cognizance of the offence punishable under Sections 147, 341 to 188 of IPC, except on the complaint given by the public servant concerned. In the case on hand, the second respondent, who is a Village Administrative Officer, at the time of alleged occurrence had lodged a written complaint. Therefore, he has no locus or competence to lodge a complaint for the offence under Section 188 of IPC. Further, he would submit that the case of the prosecution is that the petitioners unlawfully assembled and agitated against the teacher working in the Government Higher Secondary School, Pannaipuram. But, the concerned teacher did not lodge any complaint and as such the complaint as in the entire proceedings as against the petitioner is liable to be quashed.

4. The learned Government Advocate (criminal side) appearing for the first respondent would submit that the petitioner with other accused persons, unlawfully assembled and involved in a road roko and protested against the teacher working in Government Higher Secondary School, Pannaipuram who is suspected in the death of the student. Therefore, they committed the offences under Sections 147, 341 and 188 of IPC. Therefore, he sought for dismissal of the quash petition.

5. Heard the respective counsels.

6. This Court has carefully considered the rival submissions made on either side.

7. Admittedly, the second respondent is the Village Administrative Officer, Pannaipuram, Theni District, whereas the protest against the teacher working in Government Higher Secondary School, Pannaipuram, who is suspected in the death of the student. He is not the complainant.

8. The only question for consideration is that whether the registration of case under Sections 147, 341 and 188 of IPC, on the complaint lodged by the second respondent is permissible under law or not. 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;..."

9. In view of the above, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

10. The learned counsel for the petitioners relied upon the judgement in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994(1) Crimes, Page 477. In the above judgment cited by the learned counsel for the petitioners 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;



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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 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.

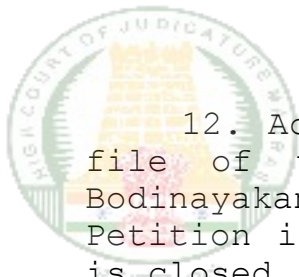
e)The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the police.

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.

11. In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 147, 341 and 188 of IPC. He is not a competent person to register an FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be quashed for the offences under Section 188 of IPC. Further, the complaint does not even state as to how the assembly formed by the persons is an unlawful assembly and does not satisfy the requirements of Section 147 & 341 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.



12. Accordingly, the charge sheet in C.C.No.18 of 2011, on the file of the learned District Munsif cum Judicial Magistrate, Bodinayakanoor, Theni District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1.The District Munsif cum Judicial Magistrate,
Bodinayakanoor,
Theni District.

2.The Sub-Inspector of Police,
Kombai Police Station, Theni District.

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

+1CC to Mr.D.Anbarasu, Advocate, SR.No.91997

CRL.O.P (MD) No.13302 of 2015
23.10.2018

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ES/SKN/RSK/SAR 2/03.12.2018/5P/5C