



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2018

C O R A M

WEB COPY

THE HONOURABLE MR.G.K.ILANTHIRAIYAN

Cr1.O.P(MD) No. 23303 of 2015
and
M.P.(MD) No.1 of 2015

1.Syam Wilfred
2.Titis @ Rajan
3. Baby @ Jannal Kumar ...Petitioners

Vs.

1. The Inspector of Police
Kulasekaram Police Station
Kanyakumari District

2.Subramanian
Special Tahsildhar
Arasu Cable TV Corporation Ltd
Collectorate, Nagercoil
Kanyakumari District ...Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Crime No.512 of 2015 on the file of the first respondent and quash the proceedings.

For Petitioner:Mr.B.Prasannavinooth
For Respondent:Mr.A.P..G.Ohm Chairma Prabhu
G.A., (Cr1. Side) for R1

ORDER

This petition has been to quash the First Information Report in Crime No.512 of 2015 on the file of the first respondent on the file of the first respondent police.

2.The case of the prosecution is that on 05.11.2015 the premises in PNN complex at Kulasekaram where Arasu cable TV signals are illegally transmitted are sealed by the second respondent. It is further alleged that on 16.11.2015 the seal in the premises was removed by some unknown persons. Hence the complaint.

3.The learned counsel for the petitioner would submit that the second respondent has no right to present the alleged complaint under Section 188 of IPC. He is only Tahsildhar of Arasu Cable TV Corporation. The Arasu cable TV corporation is only a company run by



the Tamil Nadu State Government and it is not a instrumentality of the State and it is not discharging any of the duties of public. Therefore the offence under Section 448 of IPC will not attract against the petitioner. He would further submit that no question of trespassing into the premises when the premises in question is owned by the petitioners and as such no offence under section 448 of IPC would attract as against the petitioners. Infact the second respondent has trespassed into the premised of the petitioners who are running Cable tv in the premises at PNN Complex, Kulasekaram. The second respondent has trespassed into the property, sealed the premises by misusing his official capacity. Further he would contend that Arasu Cable TV is transmitting signals through their LCO's registered under them. Whereas Cable TV operators are not willing to transmit the signals provided by the Arasu Cable TV Corporation can very well get signals from private MSO's and transmit the same to their customer and the second respondent who is a rival MSO and as such false complaint has been foisted against the petitioners. Therefore he prayed for quashing the First Information Report.

4. The learned Additional Public Prosecutor would submit that the second respondent has preferred the present complaint. The petitioners are running cable tv in the premises of PNN Complex at Kulasekaram and they are illegally transmitting ACT signals. When it was sealed by the second respondent it was removed without any order and violated the orders. Therefore the offence under Section 448 and 188 of IPC are clearly attracted as against the petitioners. He would further contend that FIR cannot be quashed at a threshold stage and therefore he prayed for dismissal of the quash petition.

5. It is seen from the records that second respondent has trespassed into the premises when the premises is owned by the petitioners and as such no offence under section 448 of IPC would attract as against the petitioners. Therefore, implicating the petitioner for the offences under Sections 448 and 188 of I.P.C does not arise. 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.

6. 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;

<https://hcservices.ecourts.gov.in/hcservices/>

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 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.

7. In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 448 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. Therefore, the final report cannot be sustained and it is liable to be quashed.

8. Accordingly, First Information Report in Crime No.512 of 2015 on the file of the first respondent is hereby quashed and the Criminal original petition is allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To
<https://hcservices.ecourts.gov.in/hcservices/>
1. The Inspector of Police
Kulasekaram Police Station



Kanyakumari District

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

+1cc to Mr.B.Prasannavinnoth Advocate in SR.No.93262

Crl.O.P (MD) No. 23303 of 2015
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AAV

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