



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

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CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P(MD)Nos.18610 of 2018

and

CRL.M.P(MD)Nos.8351 and 8352 of 2018

Theelip Jose

(Wrongly mentioned in the charge sheet as Dhileeph Jose)

: Petitioner/Accused-10

Vs.

1.The State rep. by

The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

(Cr.No.413 of 2017)

: 1st Respondent/Complainant

2.Senthil Kumar

:2nd Respondent/De-facto complainant

COMMON PRAYER : Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the charge sheet in S.T.C.No.494 of 2018, pending before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and quash the same as illegal as against the petitioner alone.

For Petitioner

: Mr.T.Lajapathiroy

For R-1

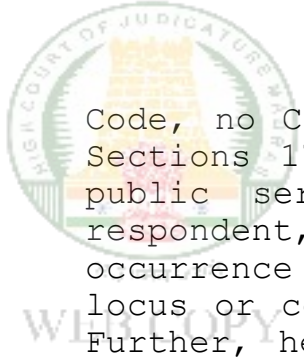
: Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition is filed to quash the charge sheet in S.T.C.No.494 of 2018, pending before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, on the file of the respondent police as against the petitioners herein, for the offences punishable under Sections 341, 143 and 188 of IPC.

2. The case of the prosecution is that on 07.12.2017 at around 13.00 hours, the petitioner along with other accused gathered unlawfully and raised slogans against the State and Central Government and also made a protest claiming relief and thereby, caused hindrance to the traffic. Hence, a case has been registered against the petitioner.

3. The learned counsel for the petitioner would submit that the petitioner and other accused said to have unlawfully assembled and agitated against the order of the Commissioner of Police, Madurai, and therefore by virtue of Section 195(1) of the Criminal Procedure



Code, no Court can take cognizance of the offence punishable under Sections 172 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 Inspector of Police, at the time of alleged occurrence had lodged a written complaint. Therefore, he has no locus or competence to lodge a complaint under Section 188 of IPC. Further, he would submit that the case of the prosecution is that the petitioner and other accused unlawfully assembled and agitated against the order promulgated by the Commissioner of Police, Kanyakumari. But, the Commissioner of Police, Kanyakumari District, did not lodged any complaint and as such the complaint as in the entire proceedings as against the petitioner are liable to be quashed.

4. The learned Government Advocate (criminal side) appearing for the first respondent would submit that the petitioner and other accused, even after the knowledge of Promulgation Order, unlawfully assembled and involved in a road roko and protested against the promulgation order. Therefore, they committed the offences under Sections 341, 143 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 Inspector of Police, Kaliyakavilai Police Station, Kanyakumari District, whereas the Promulgation Order was passed by the Commissioner of Police, Kanyakumari. He is not the complainant.

8. The only question for consideration is that whether the registration of case under Sections 341, 143 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;..."

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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 petitioner 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 petitioner 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.

11. A reading of complaint does not make out any offence under Sections 341, 143 and 188 of IPC. Since any form of an assembly will necessarily cause some hindrance to the movement of general public for some time, that itself did not constitute an offence of lawful restraint. In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 341, 143 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 Sections 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

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12. Accordingly, the charge sheet in S.T.C.No.494 of 2018, pending before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

2.The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.

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

• 1 CC TO Mr.T.LAJAJPATHY ROY , ADVOCATE IN SR No.91576.

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• SJI/MSA

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