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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P(MD)Nos.24396 of 2015

and

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

- 1.John Sahayam
- 2.Justin Raj
- 3.Selvin Paulraj
- 4.Vethamuthu
- 5.James R.Daniel
- 6.Lionel Ponnaiah
- 7.G.Lovin G.Daniel
- 8.C.P.Peter Anand
- 9.J.Jayaseelan

: Petitioners

Vs.

1. The State represented by
Inspector of Police,
Vadachery Police Station,
Vadachery,
Kanyakumari District.

2. D.Prema

: Respondents

PRAYER : Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records pertaining to S.T.C.No.187 of 2012 on the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District and quash the same.

For Petitioners : Mr.F.Deepak

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

ORDER

The Criminal Original Petition is filed to quash the charge sheet in S.T.C.No.187 of 2012, on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, on the file of the respondent police as against the petitioners herein, for the offences punishable under Sections 143 and 188 of IPC.

2.The case of the prosecution is that the de-facto complainant one D.Prema, who is working as Sub-Inspector of Police, at the respondent Police Station alleged that the petitioners belonged to Social Democratic Party of India (SDPI) disobeyed the police orders and assembled near at Vetturani Junction on 09.09.2012. Further, the petitioners have attempted to conduct demonstration. Hence, a

case has been registered against the petitioners.

3.The learned counsel for the petitioners would submit that the petitioners said to have unlawfully assembled and agitated without getting prior permission from the competent authority 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 Sub-Inspector of Police, at the time of alleged occurrence had lodged a written complaint. Therefore, she has no locus or competence to lodge a complaint for the offence under Section 188 of IPC. Therefore, the complaint in the entire proceedings as against the petitioners are liable to be quashed.

4.The learned Government Advocate (criminal side) appearing for the first respondent would submit that when Section 30(2) of the Police Act was in force, the petitioners unlawfully assembled and involved in a road roko and protested and therefore, they committed the offences under Section 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.The only question for consideration is that whether the registration of case under Sections 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 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;..."

8.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.



9. 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;

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.

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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.

10.In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 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 Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

11.Accordingly, the charge sheet in S.T.C.No.187 of 2012 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate No.II, Nagercoil,
Kanyakumari District.



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

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

+1 cc to M/s.F.DeepaK, Advocate, SR.No.93655

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SS/SKN/SAR 3/03.12.2018/5P/5C

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