

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P(MD) .No.14501 of 2019

- 1.I.P.Senthilkumar,
S/o.I.Periyasamy
- 2.Velumani,
S/o.Arumuga Gounder
- 3.Raman,
S/o.Muniyasamy
- 4.Mariappan,
S/o.Ammapatti @ Karuppaiah
- 5.Paramasivam,
S/o.Ramakrishna Goundar
- 6.Moorthi @ Eswara Moorthi,
S/o.Subramanian
- 7.Raja,
S/o.Somasundaram
- 8.Maya Thevar @ Mayee,
S/o.Thavasi Thevar
- 9.Ayyappan,
S/o.Balasubramanian
- 10.Vimalapandian,
S/o.Balasubramanian
- 11.Nagaraj,
S/o.Kulanthai Vel

... Petitioners

Vs

1. The State Represented by
The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
(Crime No.113 of 2011)
2. P.Marimuthu,
Deputy Block Development Officer,
Adivaram Police Station,
Dindigul District.

... Respondents

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the case in S.T.C.No.540 of 2011 pending on the file of the learned Judicial Magistrate, Palani, Dindigul District and quash the same as against the petitioners.

For Petitioners : Mr.R.Anand

For Respondents :

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for the entire records pertaining to the case in S.T.C.No.540 of 2011 pending on the file of the learned Judicial Magistrate, Palani, Dindigul and quash the same as against the petitioners.

2. The case of the prosecution is that on 11.04.2011 at about 04.00 p.m., the petitioners along with their party cadres of about 500 members had gathered together and proceeded with the rally from Pathavinayakar Kovil to Theradi for the purpose of election campaigning, thereby causing hindrance to the traffic and public. Based on the complaint given by the second respondent, the first respondent police registered the complaint and filed a charge sheet against the petitioners for the offences under Sections 147, 341 and 188 of IPC in S.T.C.No.540 of 2011 on the file of the learned Judicial Magistrate, Palani, Dindigul District. The said criminal proceedings is under challenge in this criminal original petition.

3. The learned counsel appearing for the petitioners would submit that the petitioners are innocent. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has a written order from the authority. He would further submit that the petitioners had never involved in any unlawful assembly and there is no evidence that the petitioners restrained anybody. As there was lot of members involved in the election campaign, the first respondent had registered the case under Sections 147, 341 and 188 of IPC., as against the petitioners. Therefore, he sought for quashing the proceedings.

4. Per contra, the learned Additional Public Prosecutor submitted that on 11.04.2011 at about 04.00 p.m., the petitioners along with their party cadres of about 500 members had gathered together and proceeded with the rally from Pathavinayakar Kovil to Theradi for the purpose of

election campaigning, thereby causing hindrance to the traffic and public. He would further submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(1) (a) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the charge as against the petitioners are concerned, the first respondent levelled the charge under Sections 147, 341 and 188 of IPC., as against the petitioners. It is seen from the charge that on 11.04.2011 at about 04.00 p.m., the petitioners along with their party cadres of about 500 members had gathered together and proceeded with the rally from Pathavinayakar Kovil to Theradi for the purpose of election campaigning, thereby causing hindrance to the traffic and public. Based on the complaint given by the second respondent, the first respondent police had registered the complaint and filed the charge sheet against the petitioners for the offences under Sections 147, 341 and 188 of IPC. It is also seen from the charge itself that the charges are very simple in nature and trivial.

7. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection as under:-

"188. Disobedience to order duly promulgated by Public Servant:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

8. The only question for consideration is that whether the registration of case under Sections 147, 341 and 188 of IPC, registered by the first 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 Courts 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;..."

Therefore, 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, in support of his contentions, relied upon a judgement in a batch of quash petitions, reported in 2018 2 L.W (Cr1) 606 in Cr1.O.P (MD).No.1356 of 2018, dated 20.09.2018 in the case of Jeevanandham and others Vs State represented by the Inspector of Police, Velayuthampalayam Police Station, Karur District, and this Court 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.

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 Section 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 General 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. He also relied upon the similar facts of the case covered under recent Judgment of this Court in the case of Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in CrI.O.P(MD).No.7922 of 2019 etc batch dated 30.08.2019 reported in (2019) 4 MLJ (CrI) 175.

11. In the case on hand, the First Information Report has been registered by the first respondent for the offences under Sections 147, 341 and 188 of IPC. He is not a competent person to register 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.

12. Accordingly, the proceedings in S.T.C.No.540 of 2011 on the file of the learned Judicial Magistrate, Palani, Dindigul District is quashed and this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

arb/rgm

To

1. The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
2. The Judicial Magistrate,
Palani, Dindigul District.
3. The Public Prosecutor,
High Court of Madras.

+1cc to the Public Prosecutor, SR. No.22965

CrI.O.P(MD).No.14501 of 2019

SMI (CO)
PR (20/05/2022)
PR (01/06/2022)