

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
Crl.O.P.No.23916 of 2019
and
Crl.M.P.No.12639 of 2019

Saritha

... Petitioner/Accused No.6

/Vs./

The Inspector of Police,
New Town Police Station,
Cuddalore.

... Respondent / De facto
Complainant

[STC No.337 of 2018 on the file of
the Judicial Magistrate II, Cuddalore]

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to call for the entire records of final report in
connection with the case in STC No.337 of 2018, on the file of
the Judicial Magistrate II, Cuddalore and quash the same.

For Petitioner :Ms.S.Deepika

For Respondent :Mr.C.Iyyapparaj

Additional Public Prosecutor

ORDER

The petitioner herein who has been arrayed as 6th accused,
has been charged for offence under Sections 341, 143 and 188
IPC.

2. The case of the prosecution is that the petitioner along
with other 18 accused had assembled in front of the respondent
police station and raised slogans in connection with the arrest
of a person in connection with Crime No.451 of 2017.

3. Insofar as the offence under Section 188 IPC is
concerned, the law with regard to the procedure to be adopted
for an offence under Section 188 IPC has been well settled
through a catena of judgments. As a matter of fact, the very
procedure contemplated under Section 195 Cr.P.C., is patently

clear to the effect that a police officer cannot take cognizance of an offence falling within Sections 172 to 188 IPC and the procedure for such prosecution is contemplated only under Section 195 Cr.P.C. Consequently, the jurisdictional Court is also deprived of taking cognizance of an offence under Section 188 IPC based on a police report filed under Section 173 (2) Cr.P.C. Such an offence can be only by way of a complaint by the concerned public servant as contemplated under Section 195 Cr.P.C.

4. In the instant case, the respondent police had chosen to register the FIR against the petitioner herein for the offence under Section 188 IPC and has also filed a report, which is opposed to the aforesaid procedure laid down. Hence, the offence under Section 188 IPC will not be made out.

5. With regard to offence under Section 341 IPC is concerned, none of the witnesses, whose statements have been recorded under Section 161 (3) Cr.P.C., had deposed that all the accused had wrongfully restrained any person from preventing that person from proceeding beyond circumscribing limits. On the other hand, the statements are to the effect that though the police had informed them that there was a promulgation in force, the petitioner along with others had raised slogans against the Government and Government Officials. As such, the ingredients of the offence of wrongful restraint under Section 341 IPC, has not been made out.

6. Insofar as the offence under Section 143 IPC is concerned, a perusal of the Statement of the witnesses under Section 161 (3) Cr.P.C., reveals that the petitioner along with others had not assembled with a common object to overawe by criminal force, or show of criminal force, the Government or any public servant, to resist the execution of any law, or any legal process, or to commit any mischief or criminal trespass, or other offence or by means of criminal force, or to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, etc., or by means of criminal force, to compel any person to do what he is not legally bound to do. To constitute an unlawful assembly, the common object of the assembly must be an immediate one to be carried on to effect forthwith. Therefore, to determine the commission of offence of an unlawful assembly would be as to whether the object of the accused persons was unlawful.

7. In the instant case, none of the witnesses speak about criminal force or trespass or had committed mischief. As such, the assembly could be determined as a peaceful assembly. In the

absence of any crime or attempt to commit a crime, the ingredients necessary for an unlawful assembly are not made out. When this group of persons cannot be termed as people of unlawful assembly, the offence under Sections 143 IPC will not be made out.

8. For all the foregoing reasons, records of final report in connection with the case in STC No.337 of 2018, on the file of the Judicial Magistrate II, Cuddalore is quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Cuddalore.

2.The Inspector of Police,
New Town Police Station,
Cuddalore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Ms.S.Deepika, Advocate sr.78633

सत्यमेव जयते

Order made in
Crl.O.P.No.23916 of 2019

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nr 11/02/2020

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