

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.23343 of 2019

and

Crl.MP.No.12268 of 2019

1.Muhamed Ibrahim

2.Akbar Malick

... Petitioners

Versus

State rep.by its

The Sub-Inspector of Police,
Kallakurichi Police Station,
Villupuram.

(Cr.No.537 of 2019)

.... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the case in Cr.No.537 of 2019 on the files of the respondent herein and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.I.Abdul Basith

For Respondents: Mr.lyyapparaj

Addl.Public Prosecutor (Crl.Side)

ORDER

The prayer sought for in the present petition is to quash the investigation in Cr.No.537 of 2018 for the offences under Section 143, 341 and 188 of IPC.

2. This Court, in its earlier order dated 09.02.2018 passed in Cr.O.P.No.24173 of 2017 had observed that no Court shall take cognizance of an offence punishable under Section 188 IPC, without the written complaint of the public servant concerned and therefore quashed the First Information Report therein.

3. In so far as the offence under Section 341 IPC is concerned, the averments made in the complaint does not indicate that there was no wrongful restrain on the part of the petitioners herein. Likewise, the offence under Section 141 IPC is concerned, the assembly as alleged in the complaint cannot deemed to be an unlawful assembly and for the purpose of attracting the ingredient under Section 143 IPC, since there was no criminal intention to commit any mis-chief or criminal trespass or to resist the execution of any law or any legal

process, the offences under both the Sections 143 and 341 IPC have not been made out. The offence under Section 188 cannot be maintained, in view of the earlier decisions of this Court made in Crl.O.P.No.24173 of 2017. The relevant paragraphs are extracted hereunder:-

" 5. Likewise, Section 143 IPC, also cannot be said to have been made out, since there was no unlawful assembly inside the Police Station. What seems to have transpired from the averments made in the complaint is that the petitioner along with others, had visited the Police Station and questioned the action of the Police.

6. The common object of the petitioner and others, while entering into the Police Station was not to resist or to obstruct the duties of the Police Officers. Likewise, they did not indulge in any criminal activities nor it can be said that the petitioner along with others constituted any unlawful assembly.

7. At this juncture, the learned Government Advocate submitted that the offence under Section 186 IPC could be made from the complaint.

8. In view of my finding that the offence under Section 143 IPC has not been made out against the petitioner, the respondent police are not empowered to register the case under Section 186, since the offence is a non-cognizable offence.

9. In so far as Section 188 IPC is concerned, the law is well settled that under Section 195 Cr.P.C., no Court shall cognizance of an offence punishable under Section 188 of IPC without the written complaint of the public servant concerned and as such it was totally improper on the part of the respondent police to have taken the complaint on file."

4. In the light of the above decision, the First Information Report cannot be sustained and accordingly, FIR No.537 of 2019 dated 09.08.2019 on the file of the Sub-Inspector of Police, Kallakurichi Police Station, Villupuram is quashed. The Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

klt/bkn

To

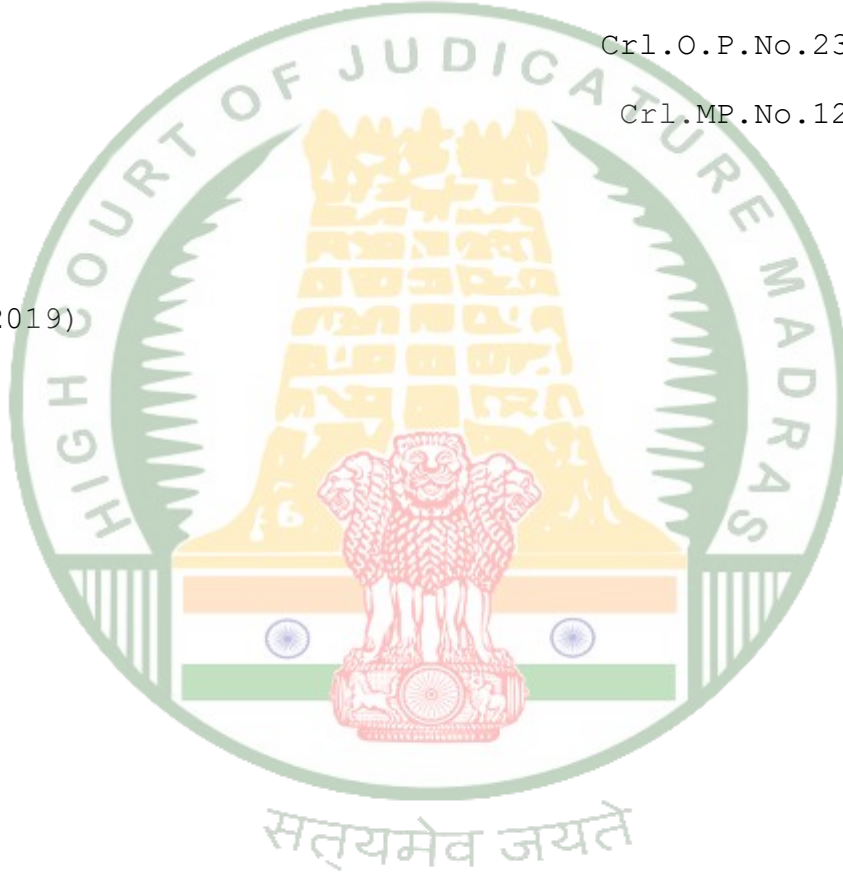
1.The Judicial Magistrate No.I,
Kallakurichi, Villupuram District.

2.The Sub Inspector of Police,
Kallakurichi Police Station,
Villupuram.

3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.23343 of 2019
and
Crl.MP.No.12268 of 2019

NR(CO)
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