

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.27877 of 2017
and CRL.MP.Nos.15863 & 15864 of 2017

1. G. Ahamed Basha
2. S. Syed Ahmed
3. S. Mohamed Ali
4. M. Bakrudeen
5. S. Seram Aliyar
6. A.Shabir Ahamed
7. M. Jahir Hussain
8. A. Pugari
9. S. MUthumeeran
10. Y. Navas
11. S. Mohamed Kani
12. B. Thamim Ansari

... Petitioners

Vs.

1. The Inspector of Police,
T-3, Korattur Police Station,
Chennai.
2. The Sub-Inspector of Police,
T-3, Korattur Police Station,
Chennai.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C. No. 160 of 2017 pending on the file of the learned Judicial Magistrate, Ambattur and to quash the same.

For Petitioners : Mr. I. Abdul Basith

For Respondents : Mr. M.Mohammed Riyaz
Addl. Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to C.C. No. 160 of 2017 pending on the file of the learned Judicial Magistrate, Ambattur and to quash the same.

2. The case of the prosecution is that these petitioners were protested in the public road without prior permission against the non release of Kaveri river water to Tamilnadu and also protested against the violent attack committed on the Tamil people and burning of registered vehicles of Tamilnadu in Karnataka. Therefore, these petitioners were arrested by the respondent police and a case has been registered under Sections 143 and 188 of IPC.

3. The learned counsel for the petitioners would submit that the trial Court committed grave error in taking cognizance of the impugned charge sheet filed by the respondent police for offences under Sections 143 and 188 IPC, which is in violation of Section 195(1)(a)(i) of Cr.PC. Further, he would submit that in view of the bar to take cognizable created under Section 195(1)(a)(i) of CrPC for offence under Section 188 of IPC, the said cognizance and issuance of summons to these petitioners by the trial Court is without jurisdiction. Therefore, the entire proceedings as against these petitioners is liable to be quashed.

4. The learned Additional Public Prosecutor appearing for the respondents would submit that these petitioners were unlawfully assembled and protested in the public road without prior permission against the non release of Kaveri river water to Tamilnadu and the violent attack committed on the Tamil people and burning of registered vehicles of Tamilnadu in Karnataka. Therefore, they committed the offence under Section 143 and 188 of IPC. Therefore, he sought for dismissal of the quash petition.

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

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

(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;..."

8. In view of the above , it is very clear that for talking cognizance of the offences under Section 188 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 judgment in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994 (1) Crimes, pages 477. In the above judgments 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.

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 FIR has been registered by the 2nd respondent police for the offences under Sections 143 and 188 of IPC. As per the procedure laid down under section 195(1)(a)(i) of Cr.P.C., the 2nd respondent police 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, once the offence under Section 188 of IPC fails, the offence under Section 143 of IPC will not stand on its own. Therefore, the final report cannot be sustained and it is liable to be quashed.

11. Accordingly, the charge sheet in C.C. No. 160 of 2017 on the file of the learned Judicial Magistrate, Ambattur is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Ambattur.
2. The Inspector of Police,
T-3, Korattur Police Station,
Chennai.
3. The Sub-Inspector of Police,
T-3, Korattur Police Station,
Chennai.
4. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.I.Abdul Basith, Advocate, S.R.No.36907

CRL.O.P.No.27877 of 2017 and
CRL.MP.Nos.15863 & 15864 of 2017

KK(CO)
SSM(29/05/2019)