



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.32550 of 2019

and

CRL.M.P.No.17924 of 2019

1.Praveen Kumar

2.M.Tyson @ Jose Daison

3.M.Velu

.. Petitioners/Accused Nos.5, 12 & 13

Vs.

The State of Tamilnadu

Represented by Inspector of Police

C-1, Flower Bazaar Police Station,

Chennai.

(Crime No.319/2018)

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the C.C.No.1555 of 2018, pending on the file of the learned Metropolitan Magistrate-VIII, George Town, Chennai and quash the same.

For Petitioners : Mr.I.Periaswamy

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This petition has been filed by the Accused Nos.5, 12 and 13 seeking to quash the proceedings pending in C.C.No.1555 of 2018.

2.The FIR was registered against the petitioners and 22 others for the offences under Sections 143 and 188 IPC and Section 174(A) of the Railway Act, 1989. The Inspector of Police, who registered the FIR also conducted the investigation and he has filed the final report before the Court below. The list of witnesses who have been examined by the investigating officer are all police officers belonging to the same Police Station. Ultimately a final report came to be filed against the petitioners and 22 others for the offences under Sections 147 and 290 of IPC.

3.The learned counsel for the petitioners has submitted that the entire Investigation is vitiated due to the



fact that the complainant himself was the investigating officer and the persons who have been examined by the complainant are all police officers belonging to the same Police Station and the same officer also laid the final report. Therefore, the learned counsel submitted that there is absolutely no independent investigation that was conducted in this case. The learned counsel further submitted that the FIR was registered for the offences under Sections 143 and 188 of IPC. Only a complaint should have been filed by the concerned officer with the offence is shown registered under Section 188 of IPC. However an FIR was registered and the same was investigated and the final report has been filed and therefore the final report is vitiated as per the judgment of this Court in Jeevanandham and others v. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another reported in 2018 2 LW (Cri) 606.

4.The learned Additional Public Prosecutor submitted that there are sufficient materials to sustain the final report filed by the respondent police and the petitioner/s engaged in illegally forming themselves into an unlawful assembly and had conducted the protest without any permission and thereby had caused public disruption.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The fact that an FIR was registered under Section 188 of Cr.P.C. and the investigation was conducted thereon itself vitiate the entire investigation. The law has been settled in this regard by the judgment of this Court in Jeevanandham and others v. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another reported in 2018 2 LW (Cri) 606.

7.It is true that the Hon'ble Supreme Court in the judgment in Varinder Kumar v. State of Himachal Pradesh has clarified the position regarding the effect of its earlier judgment in Mohanlal v. State of Punjab to the effect that it will only have a prospective operation. However, the Hon'ble Supreme Court itself has stated that the cases shall be governed by the individual facts. Therefore, if the Court finds that the investigation is vitiated on the facts of the case, the Court can always interfere with the same in line with the ratio in Mohanlal v. State of Punjab.

8.In this case, the officer who had registered the FIR had also conducted the investigation and has taken the statements of the police officers of his own Police Station and thereafter has proceeded to file a final report also. So, it cannot said as a fair investigation and the fundamental principles of criminal law that the informer and the



investigator must not be the same person will squarely apply in the present case.

9. In order to get over the bar of registering an FIR under Section 188 of Cr.P.C. and filing a final report, the respondent police thought it fit to file a final report for the offences under Sections 147 and 290 of IPC also. In view of Section 195 Cr.P.C no Court shall take cognizance in respect of the offence under Section 188 Cr.P.C except on a complaint in writing by the concerned officer. Hence, taking of cognizance by the learned Magistrate based on the police report in respect of the offence under Section 188 Cr.P.C is barred. The offence under Section 188 Cr.P.C is the main offence and the other offences are consequential in nature. Hence, the entire final report is liable to be quashed.

10. In the result, this Criminal Original Petition is disposed of and the proceedings in C.C.No.1555 of 2018 on the file of the learned Metropolitan Magistrate No.VIII, George Town, Chennai, is hereby quashed against the petitioners herein are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi/ebsi

To

1. The Metropolitan Magistrate-VIII,  
George Town,  
Chennai

2. The Inspector of Police,  
State of Tamilnadu,  
C-1, Flower Bazaar Police Station,  
Chennai.

3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.I.Periyasamy, Advocate SR.101077

CRL.O.P.No.32550 of 2019  
and  
CRL.M.P.No.17924 of 2019

NMI (CO)  
CB(23/01/2020)