

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.34060 of 2019

and

Crl.M.P.Nos.18820 & 18821 of 2019

1. C.Rajasekar
2. M.Aravind
3. S.Sivakumar
4. R.Balaji
5. M.Periyasami
6. S.Ibrahm
7. R.Senthil Kumar
8. P.Samuvel
9. S.Marimuthu
- 10.R.Thunaivendan
- 11.M.Selvakumar
- 12.K.Saleem
- 13.S.Chandra
- 14.M.Elakkia
- 15.D.Vennila
- 16.A.Elavarasi
- 17.M.Kanimozhi
- 18.S.Kayalvizhi
- 19.D.Selvi

...Petitioners

-Vs-

State Rep by
The Inspector of Police (L& O).
J.4, Kotturpuram Polic Station,
Kotturpuram, Chennai - 600 085.
(Cr.No.782/17)

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records connected with the final report in C.C.No.5561/17 dated 20.06.2017 pending on the file of the Metropolitan Magistrate-IX, Saidapet and quash the same.

For Petitioners : Mr.S.Jimraj Milton

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed by the accused Nos.1 to 19 to quash the final report in C.C.No.5561 of 2017 on the file of the Metropolitan Magistrate No.IX, Saidapet, and to quash the same.

2. The learned counsel for the petitioners has submitted that an FIR was registered in Cr.No.782/2017 against the petitioners herein under Sections 143 and 188 of IPC. He further submitted that the complainant himself has proceeded to investigate the matter and filed the final report. Hence, the investigation is vitiated. He further submitted that based on the said final report, the learned Metropolitan Magistrate No.IX, Saidapet, has taken the case on file. He further submitted that as per Section 195(1)(a) of Cr.P.C., taking cognizance in respect of the offence under Section 188 IPC can be made only based on the complaint filed by the concerned Officer in writing but in this, the said procedure has not been followed and on the contrary, the respondent police filed the final report and based on the police report, the learned Metropolitan Magistrate No.IX, Saidapet, has taken the case on file. On that ground also, the said FIR has to be quashed.

3. The learned Additional Public Prosecutor has fairly conceded that the Officer, who lodged the complaint against the petitioners has himself investigated the matter and filed the final report. Further, he has also fairly conceded that based on the final report, in view of Section 195(1)(a) Cr.P.C., taking cognizance cannot be accepted and hence, he prayed to pass an appropriate order.

4. Section 195(1)(a) Cr.P.C. Reads thus:

"Section 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) if any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 to 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:"

5. From the aforesaid provision, it is clear that no Court shall take cognizance of the offences punishable under Sections 172 to 188 (both inclusive) of Indian Penal Code, except on the complaint in writing of the public servant concerned or of some public servant to whom he is administratively subordinate. In this case, no such complaint has been filed in respect of the offence under Section 188 IPC but on the contrary, the respondent has filed a final report

and based on the same, the Magistrate should not have taken the case on file.

6. Since taking cognizance of the case in respect of the offence under Section 188 IPC is not in accordance with the provision of Section 195(1)(a) Cr.P.C., the other offence under Section 143 IPC is being an ancillary one, the entire final report is liable to be quashed. Apart from that it appears that the officer, who lodged the complaint has himself investigated the matter and filed the final report. On that ground, the investigation is vitiated and the said Final report is also liable to be quashed.

7. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mfa

To

1.The Inspector of Police (L& O).
J.4, Kotturpuram Polic Station,
Kotturpuram, Chennai - 600 085.
(Cr.No.782/17)

2.The Public Prosecutor,
High Court, Madras.

3. The IX Metropolitan Magistrate, Saidapet,

4. The Chief Metropolitan, Magistrate,
Egmore, Chennai-8

+2cc to Mr.S.Jimraj Milton, Advocate SR.No.105745

Cr1.O.P.No.34060 of 2019
and

Cr1.M.P.Nos.18820 & 18821 of 2019

GMR(CO)
GMY(29/01/2020)