



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.34256 of 2019

and

Crl.M.P.Nos.18964 and 18965 of 2019

1. V.Venkatesan
2. P.Ravi
3. J.Selvaraj
4. J.Wilson
5. V.Baskaran
6. A.Aruldas
7. A.Elavarasi
8. E.Ellammal
9. K.Neelavathi
10. J.Russiabanu
11. V.Vanathi

... Petitioners

Vs.

State Rep.by
The Inspector of Police (L & O)
G3-Kilpauk Police Station,
Kilpauk, Chennai - 600 084.
(Crime No.1051 of 2017)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records connected with the final report in C.C.No. 8041/17 dated 07.10.2017 pending on the file of learned Metropolitan Magistrate - II, Egmore and quash the same.

For Petitioners: Mr.S.Jimraj Milton

For Respondent : Mr.C.Raghavan,
Government Advocate

ORDER

This petition has been filed to call for the records connected with the final report in C.C.No. 8041/17 dated 07.10.2017 pending on the file of learned Metropolitan Magistrate - II, Egmore and quash the same.

2. The learned counsel for the petitioners has submitted that an FIR was registered in Cr.No.1051/2017 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.II, Egmore has taken the case on file in C.C.No.8041 of 2017. 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 case, the said procedure has not been followed and on the contrary, the respondent police filed a final report and based on the said police report, the learned Metropolitan Magistrate No.II, Egmore, has taken the case on file and on that ground also, the proceedings against the petitioners in C.C.No.8041 of 2017 on the file of the Metropolitan Magistrate No.II, Egmore has to be quashed.

3. The learned Government Advocate has fairly conceded that the Officer, who lodged the complaint against the petitioner has himself investigated the matter and filed the final report. Further, he fairly conceded that taking cognizance of the offence under Section 188 of IPC is barred by Section 195(1)(a) Cr.P.C., 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 has 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 a final report. On that ground, the investigation is vitiated and the said FIR is also liable to be quashed.

7. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners herein in C.C.No.8041 of 2017 alone quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police (L & O)
G3-Kilpauk Police Station,
Kilpauk, Chennai - 600 084
2. The Metropolitan Magistrate No.II
Egmore.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+2cc to Mr.Jimraj Milton, Advocate SR.106191

CrI.O.P.No.34256 of 2019
and

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RSV(CO)
CB(20/02/2020)