



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM:

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)Nos. 6341 & 6342 of 2019
and Crl.M.P.(MD) Nos. 4191 & 4192 of 2019
in Crl.O.P.(MD) No.6341 of 2019
and Crl.M.P.(MD) Nos. 4193 & 4194 of 2019
in Crl.O.P.(MD) No.6342 of 2019

Crl.O.P(MD) No.6341 of 2019

1. Premalatha
2. S.R. K. Balasubramani .. Petitioners/Accused Nos.1 & 2

Vs.

1. The State
by the Inspector of Police,
Kannivadi Police Station,
Dindigul District.
(Crime No. 61 of 2011) : 1st Respondent/Complainant
2. P. Velusamy S/o.Palanisamy
Village Administrative Officer,
Sirankadu Village,
Dindigul District. : 2nd Respondent/Defacto Complainant

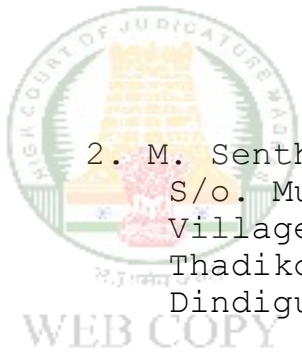
PRAYER:- Petition filed under 482 of Cr.P.C., to call for the records in respect of C.C. No.86 of 2012 on the file of the learned Judicial Magistrate No.I, Dindigul and quash the same.

Crl.O.P(MD) No.6342 of 2019

1. Premalatha
2. S.R.K. Balasubramani
3. Prabu
4. S. Velusamy : Petitioners/Accused Nos.1,2,7 & 8

Vs.

1. State rep. by
by the Inspector of Police,
Thadikombu Police Station,
Dindigul District.
(Crime No. 145 of 2011) : 1st Respondent/Complainant



2. M. Senthil Kumar
S/o. Murugan,
Village Administrative Officer,
Thadikombu Village,
Dindigul District.

: 2nd Respondent/Defacto Complainant

PRAYER:- Petition filed under 482 of Cr.P.C., to call for the records in respect of C.C. No.162 of 2011 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same.

In Both CrI. O.Ps.

For Petitioners : Mr.D. Venkatesh

For Respondent-1 : Mr.K. Suyambulinga Bharathi
Government Advocate (crl. Side)

COMMON ORDER

Cr.O.P.(MD) No. 6341 of 2019 has been filed to quash the proceedings in C.C. No.86 of 2012 on the file of the learned Judicial Magistrate No.I, Dindigul and quash the same.

Cr.O.P.(MD) No. 6342 of 2019 has been filed to quash the proceedings in C.C. No. 162 of 2011 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same.

2. The case of the prosecution is that the the petitioners are belonging to DMDK Political party and without any permission, the petitioners have gathered in Kannivadi Bus stop and Market Street Main Road, Thadikombu in four-wheelers for election campaign, though the second respondent objected their act, they did not hear the same and continued to violate the election code of conduct. Based on a complaint given by the second respondent, the first respondent police registered case in Crime No.61 of 2011 for the offences under sections 143, 341, 188 of I.P.C and Section 177 of the Motor Vehicles Act and also filed final report for the offences under Sections 290 of IPC and Section 177 of MV Act and Section 133 of the Representation of People Act and the same was taken cognizance in C.C. No.163 of 2011 on the file of the learned Judicial Magistrate No.II, Dindigul and the same was transferred to the file of the learned Judicial Magistrate No.I, Dindigul in C.C. No.86 of 2012 and also filed Crime No.145 of 2011 for the offences under sections 188, 171(H) of the IPC and 177 & 96 of the Motor Vehicles Act and also filed final report for the offences under Sections 171(H) of IPC and 4(i) and 4(A) of Tamil Nadu Open Place (Prevention of Disfigurement) Act, 1959 and Section 133 of the Reperesentation of People Act r/w



Section 177 of Motor Vehicles Act and the same was taken cognizance in C.C. No. 162 of 2011 on the file of the learned Judicial Magistrate No.II, Dindigul. The said criminal proceedings are under challenge in the Criminal Original Petitions.

3. According to the petitioners, the petitioners are innocents. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has written order from the authority. Further he submitted that the petitioners or any other members had never disturbed public, public tranquillity and peace and there is no evidence that the petitioners caused damages to the public property. The petitioners have not violated the Election Code of conduct. On precautionary measures, the respondent police have registered the cases, under Section 143 and 188 of IPC as against the petitioners. Therefore, they sought for quashing the proceedings.

4. The learned Government Advocate(Crl.Side) submitted that there are specific allegations as against the petitioners to proceed with the trial. Further, he would submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petitions and prayed for dismissal of the petitions.

5. Perused the material documents available on record.

6. On perusal of the charge, it is seen that the petitioners have gathered in more than 3 four-wheeler for election campaign in public place. Therefore the respondent police levelled the charges under Sections 143 and 188 of I.P.C. as against the petitioners. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioners. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188 reads as follows:

"188. Disobedience to order duly promulgated by public servant – Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine



which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7. The only question for consideration is that whether the registration of case under Sections 143, 188 IPC, registered by the 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 Courts 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;..."

Therefore, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

8. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143 and 188 IPC. He is not a competent person to register 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, the complaint does not even state as to how the petitioners have violated the election code of conduct in and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.



9. Accordingly, the proceedings in C.C. Nos. 86 of 2012 and 162 of 2011 in Crime Nos. 61 of 2011 and 145 of 2011, are quashed and the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate No.I, Dindigul.
2. The Judicial Magistrate No.II, Dindigul.
3. The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
4. The Inspector of Police,
Thadikombu Police Station,
Dindigul District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.D.VENKATESH, Advocate SR-89710 & 89711.

Crl.O.P. (MD) Nos. 6341 & 6342 of 2019

24.09.2019

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