



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

Crl. O.P. (MD) No. 10346 of 2019

and

Crl. M.P. (MD) No. 6475 of 2019

WEB COPY

1. K.K.S.S.R. Ramachandran

2. K.K.S.S.V.T. Subbaraj ...Petitioners/First and Second Accused

-vs-

State through
Sub Inspector of Police,
Pandalkudi Police Station,
Virudhunagar District,
Crime No. 46/2017

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the proceedings in Crime No. 46/2017 on the file of the Respondent Police and quash the same in respect of Petitioners/First and Second Accused.

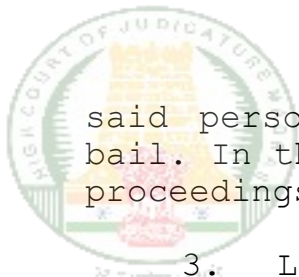
For Petitioners : Mr. N. Naganathan
for Veera Associates

For Respondent : Mr. A. Natarajan,
State Public Prosecutor assisted by
Mr. M. Mohamed Muzammil,
Learned Government Advocate
(Criminal Side)

O R D E R

Heard N. Naganathan, Learned Counsel appearing for the Petitioner and Mr. A. Natarajan, Learned State Public Prosecutor assisted by Mr. M. Mohamed Muzammil, Learned Government Advocate (Criminal Side) appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Petitioner along with 85 persons had on 13.03.2017 conducted a demonstration near the Fair Price Shop at Pandalkudi, Virudhunagar District condemning the unfair distribution of PDS commodities. According to the prosecution, as the permission from the Police had not been obtained for the same, it was considered as an unlawful assembly and FIR was registered under Sections 143 and 188 of the Indian Penal Code, 1860, against the



said persons, who were arrested on the same day and released on bail. In this backdrop, this Petition has been filed challenging the proceedings in Crime No. 46/2017 on the file of the Respondent.

3. Learned Counsel for the Petitioner submits that this Court in **Jeevanandham -vs- State** [(2018) 2 LW (Crl.) 606] after examining various decisions relating to taking cognizance of offences under Section 188 of Indian Penal Code, 1860, has reiterated the legal position 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 Section 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 General 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."

That apart, it is also brought to the notice of this Court that in the same decision, this Court has dealt with similar cases in respect of Section 143 of the Indian Penal Code, 1860, and has held as follows:-

"27. Cr1.O.P. (MD) Nos.1356,14873,14785 and 15866 of 2018:-

In all these cases, it is seen that a Final Report has been filed for an Offence under Section 188 and 143 of IPC and cognizance has also been taken by the concerned Judicial Magistrates. In view of the above discussion, the cognizance of the Final Report under Section 188 of IPC is liable to be quashed. Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees. Whereas an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of IPC. In all the cases, the assembly of



persons were made to express dissatisfaction of the governance and claiming for minimum rights that are guaranteed to a ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.

2. In these cases, the informant and the investigator are one and the same person. Therefore, there was no fair investigation in these cases. This issue is covered by the judgment of the Hon'ble Supreme Court in Mohanlal .Vs. The State of Punjab in Crl.A.No.1880 of 2011 referred supra. Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed. Accordingly, the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed."

It is also informed that the said decision has been followed by this Court in a similar fact situation in the order dated 22.04.2019 in Crl. O.P. (MD) No. 5343 of 2019, a copy of which has been produced.

4. In view of the aforesaid legal position, which is not disputed by the Learned State Public Prosecutor appearing for the Respondent, it is contended by the Learned Counsel for the Petitioner that the impugned prosecution under Sections 143 and 188 of the Indian Penal Code, 1860, in a similar fact situation, cannot be sustained and has to be quashed.

5. Having regard to the aforesaid submissions made, the prosecution of Petitioners under Sections 143 and 188 of the Indian Penal Code, 1860, in Crime No. 46 of 2017, cannot be sustained and accordingly, the same is quashed.

6. This Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To
Sub Inspector of Police,
Pandalkudi Police Station,
Virudhunagar District.

Crl. O.P. (MD) No. 10346 of 2019
07.08.2019

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