



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P(MD) No. 12029 of 2019

and

CRL.M.P (MD) No.7563 of 2018

K.Andrews

... Petitioner/A-56

Vs.

1. State represented by
The Inspector of Police,
Kanyakumari Police Station,
Marthandam,
Kanyakumari District.
(Crime No.548 of 2017)

... Respondent-1/Complainant

2.Muthu
Village Officer,
Naloor Village, Vilavancode,
Kanyakumari District.

... Respondent-2/Defacto
Complainant

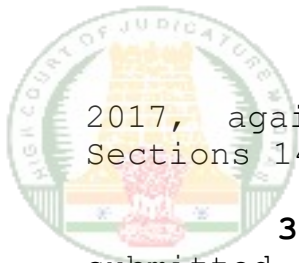
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the impugned First Information Report in Crime No.548 of 2017, dated 08.12.2017, for the offences under Sections 143, 188 and 341 of the Indian Penal Code, pending on the file of the first respondent and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.J.Pandi Dorai
For Respondent-1 : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.548 of 2017, on the file of the first respondent, for the offences under Sections 143, 188 and 341 of the Indian Penal Code.

2. The case of the prosecution is that the second respondent had given a complaint before the first respondent stating that the petitioner along with other accused persons raised slogans against the State Government and caused hindrance to vehicular traffic and staged a rail roko agitation by sitting in the tracks. Hence, the respondent police registered a case in Crime No.548 of



2017, against the petitioner and others for the offence under Sections 143, 188 and 341 of the Indian Penal Code.

3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person. 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 involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. However, the officials of the first respondent police had beaten the petitioner and others. When there was lot of members involved in the protest, the first respondent police had registered this case, under Sections 143, 188 and 341 IPC as against the petitioner and others. Therefore, he sought for quashing the Proceedings in Crime No.548 of 2017.

4. Per contra, the learned Government Advocate (Criminal side) appearing for the first respondent submitted that the petitioner along with others staged protest against the State Government and also there are specific allegations as against the petitioner 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 petition and prayed for dismissal of the same.

5. Heard Mr.J.Pandi Dorai, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal side) appearing for the first respondent.

6. On perusal of the charge, it is seen that the petitioner and others staged protest against the State Government, without getting prior permission from the concerned authority. Therefore, the first respondent police levelled the charges under Sections 143, 341 and 188 of I.P.C. as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioner. 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 to tender 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 Section 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 first respondent police for the offences under Sections 143, 188 and 341 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 protest formed by the petitioner and others is an unlawful protest 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 initiated against the petitioner in Crime No.548 of 2017, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1. The Inspector of Police
Kanyakumari Police Station
Marthandam, Kanyakumari District.

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.J.PANDI DORAI, Advocate (SR-98192[F] dated 14/11/2019)

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