



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.(MD) .No.1163 of 2018

and

CRL.M.P(MD)Nos. 485 and 486 of 2018

Alexandar Raj Kumar

..Petitioner/ Accused No.3

Vs.

The State of Tamil Nadu rep.by its
The Inspector of Police,
Kottar Police Station,
Nagercoil, Kanyakumari District.

..Respondent/ Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records from the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District in C.C.No.37 of 2008 and quash the same as against this petitioner.

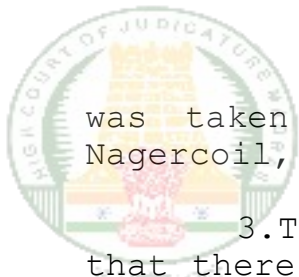
For Petitioner : Mr.K.Ramamoorthy

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition is filed to quash the criminal proceedings in C.C.No.37 of 2008 on the file of the learned Judicial Magistrate No.II, Nagercoil, charged for the offences punishable under Sections 188, 143, 285 and 544 IPC.

2.The case of the prosecution is that on 17.10.2005 at about 11.50.am., while the defacto complainant, namely, Balamurugan Sub-Inspector of Police, Kottar Police Station along with Grade-I Police Constable 751, and head constable were riding in the occurrence place, the petitioner and other accused persons tried to fire the Kumutham paper on the ground that the issue that Tsunami funds of Rs.57 crores taken by Hon'ble Central Minister Anbumani Ramathas, was published in that news paper. Therefore, they tried to fire the news paper. On the basis of the above said allegation, the respondent police registered the case in Crime No.1514 of 2005 for the offence punishable under Sections 188, 143, 285, 544 IPC and filed a charge sheet against the petitioner and others and the same



was taken cognizance by the learned Judicial Magistrate No.II, Nagercoil, in C.C.No.37 of 2008.

3.The learned counsel appearing for the petitioner submitted that there are totally 7 accused in this case. He further submitted that the petitioner is an innocent and he has not committed any offence alleged by the prosecution. The properties like kerosin and match box, Kumutham paper, which were recovered from other accused persons. Further he submitted that the petitioner had never involved in any unlawful assembly and there is no evidence that the petitioner restrained anybody. When there was lot of members involved in the occurrence, the respondent police had registered this case, under Section 188, 143 285 and 544 IPC as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4.Per contra, the learned Government Advocate (Criminal Side) would submit that the petitioner along with others tried to fire the Kumutahm paper in public place. 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.K.Ramamoorthy, learned counsel for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Criminal Side) appearing for the respondent.

6.On perusal of the charge, it is seen that the petitioner and others tried to fire the Kumutham Paper. Therefore the respondent police levelled the charges under Sections 143 and 188 of I.P.C. as against the petitioner and others. 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.

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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.The learned counsel for the petitioner relied upon a judgement in **Mahaboob Basha Vs. Sambanda Reddiar and others** reported in **1994(1) Crimes, Page 477**. He also relied upon a judgment in a batch of quash petitions, reported in **2018-2-L.W. (Cr1.) 606** in **Crl.O.P. (MD)No. 1356 of 2018**, dated 20.09.2018 in the case of **Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District**, and this Court held in Paragraph-25, 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



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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.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 188, 143, 285 and 544 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 petitioners 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.

10. Accordingly, the proceedings in C.C.No.37 of 2008, on the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar

To

1. The Judicial Magistrate No.II, Nagercoil, Kanyakumari District.
2. The Inspector of Police,
Kottar Police Station, Nagercoil, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CRL.O.P.(MD).No.1163 of 2018 and
CRL.M.P(MD)Nos. 485 and 486 of 2018
04.09.2019

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