



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

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

CRL.O.P(MD) No. 2737 of 2018
and CRL.M.P (MD) No.1263 of 2018

R. Jeyaraman ... Petitioner/ Sole Accused
Vs.

1. The Inspector of Police
Tirumangalam Town Police Station
Madurai District.

2. Annaraj,
Inspector of police,
Thirumangalam Police Station,
Madurai District.
Crime No. 243 of 2016

... Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No. 243 of 2016 on the file of the first respondent police and quash the same as illegal.

For Petitioner : No Appearance

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 the First Information Report in Crime No. 243 of 2016 on the file of the first respondent police.

2. The case of the prosecution is that the second respondent had given a complaint before the first respondent stating that the petitioner belonging to the candidate of Member of Legislative Assembly Election, 2016 belongs to Congress party and his men were demonstrating front of the CSI Church at Thirumangalam, violating the election rules without any permission. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offence under Section 188 of IPC in Crime No. 243 of 2016.



3. According to the petitioner, he is innocent and 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. The petitioner has not violated the norms of the election rules. The respondent police has no jurisdiction to register a case and the election officer is a competent authority to initiate the prosecution. When there was lot of members involved in the protest, the respondent police had registered this case, under Section 188 of I.P.C. as against the petitioner. Therefore, he sought for quashing the proceeding.

4. The learned Government Advocate(Crl.Side) submitted that the petitioner and his men were violating the election rules and therefore, there is specific allegation 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. Perused the material documents available on record.

6. On perusal of the charge, it is seen that the petitioner who is the candidate of member of Legislative Assembly Election 2016 belongs to Congress party and his men were demonstrating front of the CSI Church at Thirumangalam, violating the election rules. Therefore the respondent police levelled the charge under Section 188 of I.P.C. as against the petitioner. 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 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 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 respondent police for the offence under Section 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. Therefore, the final report cannot be sustained and it is liable to be quashed.

9. Accordingly, the proceedings in Crime No. 243 of 2016, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar



To:

1. The Inspector of Police
Tirumangalam Town Police Station
Madurai District.

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

+1 CC to M/s.T.VADIVELAN, Advocate (SR-86393[F] dated 12/09/2019

CRL.O.P (MD) No. 2737 of 2018
10.09.2019

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