



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2019

CORAM:

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

CRL.O.P(MD)No.21569 of 2018

WEB COPY

- 1.Esakkipandi
- 2.Esakkidurai
- 3.Chellaiah
- 4.Sivan @ Sivanpandian
- 5.Sudalaikannu@Sudalaikannan
- 6.Murugan

...Petitioners/Accused Nos.1 to 6

Vs.

- 1.The State Rep. by
The Inspector of Police,
Moolakaraipatti Police Station,
Tirunelveli District.

...1st Respondent/Complainant

- 2.Narayana Vadivu

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in respect of Crime No.153 of 2018 on the file of the 1st respondent and quash the same.

For Petitioners	: Mr.D.Venkatesh
For R1	: Mr.R.Anandharaj
	Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.153 of 2018 on the file of the first respondent, as against the petitioners.

2. The case of the prosecution is that there is an objection for forming shelter at Thevar Peravai Ninaivu Chinnam situated in Natham Survey No.820/3, Munanjipatti Village. on 01.02.2018, there was a peace committee meeting in the premises of the first respondent police. There it was admitted that after getting necessary permission from the Collector and as well as the Village Panchayat shelter will be formed. It was agreed if any violation is found, they are ready to face the action of the Government. On the eve of Thevar Jeyanthi on 29.10.2010 during the shelter was formed by the Thevar Community people.



On the basis of the above said allegations, the respondent police registered the complaint against the petitioners and others for the offences under Sections 448 and 188 of IPC in Crime No.153 of 2018. The said F.I.R. is under challenge in this Criminal Original Petition.

WEB COPY

3. According to the petitioner, the petitioner is an innocent. As per 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 tranquility and peace and there is no evidence that the petitioners caused damages to the public property. The petitioners unaware about the order of the Commissioner of Police regarding banning the demonstration. On precautionary measures, the respondent police had registered this case, under Sections 488 and 188 of IPC as against the petitioners. Therefore, they sought for quashing the proceeding.

4. The learned Additional Public Prosecutor submitted that there is an objection for forming shelter at Thevar Peravai Ninaivu Chinnam situated in Natham Survey No.820/3, Munanjipatti Village. 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 F.I.R, it is seen that there is an objection for forming shelter at Thevar Peravai Ninaivu Chinnam situated in Natham Survey No.820/3, Munanjipatti Village. on 01.02.2018, there was a peace committee meeting in the premises of the first respondent police wherein it was admitted that after getting necessary permission from the Collector and as well as the Village Panchayat, shelter will be formed. Further, it was agreed if any violation if found, they are ready to face the action of the Government. However, on the eve of Thevar Jeyanthi on 29.10.2010 during night hours, the shelter was formed by the Thevar Community people in violation of the agreement arrived at in the Peace Committee Meeting and hence, the respondent police levelled the offences Sections 488 and 188 of IPC 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 tends 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 448 and 188 of IPC, registered by the first 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 :-

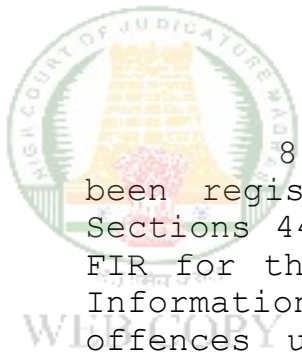
"195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Courts shall take cognizance-

(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 offence 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 448 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. Therefore, the final report cannot be sustained and it is liable to be quashed.

9. Accordingly, the F.I.R, in Crime No.153 of 2018, on the file of the first respondent, is quashed and the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsd
To

- 1.The Inspector of Police,
Moolakaraipatti Police Station,
Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D. VENKATESH, Advocate (SR-101706[F] dated
27/11/2019)

CRL.O.P(MD)No.21569 of 2018
26.11.2019

mk(CO)
TR(07.01.2020) 4P 4C