

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.09.2019

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**CRL.O.P (MD) No.13171 of 2019

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Rajapoornachandran

... Petitioner

Vs.

1.The Inspector of Police
Thiru Nagar Police Station,
Madurai City,
Cr.No.159 of 2018.

2.K.P.Manikumar,
Sub Inspector of Police,
Thiru Nagar, Madurai.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in Cr.No.159/2018 on the file of 1st respondent police and quash the same as against this petitioner.

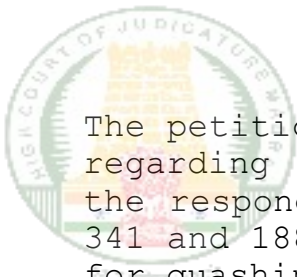
For Petitioner : Mr.M.Saravakumar
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.159 of 2018 for the offences under Sections 143, 341 and 188 of I.P.C., on the file of the first respondent, as against the petitioner.

2. The case of the prosecution is that while the second respondent has conducted a routine surveillance, near Thirunagar second bus stop, nearer to the Union Office, Thirupparamkundram, the petitioner and 51 others against the Prohibitory Order under Tamilnadu Police Act 30(ii), the petitioner and others have assembled unlawfully and raising slogans against the Government Authority and they disturb the public. On the basis of the above said allegations, the respondent police registered the complaint against the petitioner and others for the offences under Sections 143, 341 and 188 of IPC in Crime No. 159 of 2018. The said F.I.R. is under challenge in this Criminal Original Petition.

3.According to the petitioner, the petitioner is an innocent. 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 says that neither the petitioner or any other members had never disturbed public, public tranquility and peace and there is no evidence that the petitioner caused damages to the public property.



The petitioner 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 143, 341 and 188 of IPC as against the petitioner. Therefore, they sought for quashing the proceeding.

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4. The learned Government Advocate (Crl. Side) submitted that the petitioner and others have attempted to stage demonstration before the Union Office, Thirupparamkundram, without any permission in prohibited area, while prohibitory order was in force and 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. Perused the material documents available on record.

6. On perusal of the F.I.R., it is seen that the petitioner and others have attempted to stage demonstration before the Union Office, Thirupparamkundram, without any permission in prohibited area, while prohibitory order was in force. Therefore the respondent police levelled the offences under Sections 143, 341 and 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 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 143, 341 188 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 :-

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"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 offences under Sections 143, 341 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. Further, the complaint does not even state as to how the petitioner and others have attempted to stage demonstration in prohibited area 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 F.I.R, in Crime No.159 of 2018, on the file of the first respondent, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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To:

1. The Inspector of Police
Thiru Nagar Police Station,
Madurai City,

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

+1CC TO MR.M.SARAVANAKUMAR, Advocate Sr. No. 88876

CRL.O.P(MD) No.13171 of 2019

23.09.2019

PM(CO)

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