



[BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT]

DATED: 01.11.2019

CORAM:

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

Crl.O.P. (MD)No.8235 of 2018

and

Crl.M.P. (MD)No.3703 & 3704 of 2018

H.Amalan Rajiv Bonifas

...Petitioner/Accused No.2

-Vs-

1.The Inspector of Police
Sathankulam Police Station,
Thoothukudi District
Cr.No.186/2012.

... 1st Respondent/Complainant

2.Sathiyaraj ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.35 of 2013 on the file of the learned Judicial Magistrate Sathankulam, Thoothukudi District and quash the proceedings against the petitioner.

For Petitioners : Mr.A.Thiruvadi Kumar

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 proceedings in S.T.C.No.35 of 2013 on the file of the learned Judicial Magistrate Sathankulam, Thoothukudi District.

2. The case of the prosecution is that on 06.07.2012, the petitioner and other accused persons were blocked the road nearby Kamarajar Statue at Pannaparai Main Road within intention to disturb the public, without prior permission in prohibited area, while prohibitory order was in force. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and other accused for the offences under Sections 143, 341 and 188 of IPC in Crime No. 186 of 2012 the same was taken cognizance by the learned Judicial Magistrate, Sathankulam, Thoothukudi District. The said criminal proceedings 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, the learned counsel for the petitioner would submit that 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 Section 143, 341 and 188 of IPC as against the petitioner. Therefore, he sought for quashing the proceeding.

4. The learned Government Advocate(Crl.Side) would submit that the petitioner and other accused persons were blocked the road nearby Kamarajar Statue at Pannaparai Main Raod within intention to disturb the public, without prior permission, in prohibited area, while prohibitory order was in force and there are specific allegations as against the petitioner and other accused 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 and other accused persons were blocked the road nearby Kamarajar Statue at Pannaparai Main Raod within intention to disturb the public, without prior permission in prohibited area, while prohibitory order was in force. Therefore the respondent police levelled the charges 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 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,



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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 and 188 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 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 offence under Section 188 of IPC. Further, the complaint does not even state as to how the petitioners 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 proceedings in S.T.C.No.35 of 2013 on the file of the learned Judicial Magistrate Sathankulam, Thoothukudi District, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate
Sathankulam,
Thoothukudi District.

2.The Inspector of Police
Sathankulam Police Station,
Thoothukudi District.

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

+1CC TO MR.A.THIRUVADI KUMAR, Advocate Sr. No. 95660

Cr1.O.P.(MD)No.8235 of 2018
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