

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

DATED: 11.11.2019

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**CRL.O.P (MD) No.14328 of 2019
and CRL.M.P (MD) 8653 of 2019

WEB COPY

1. Atham Bava
2. Malik @ Khalid Mohamed ... Petitioners/Accused Nos.1 & 2
Vs.
1. The Inspector of Police
Nagamalai Pudhukottai Police Station
Nagamalai Pudhukottai
Madurai District ... 1st Respondent/Complainant
2. Pommaiyaamy ... 2nd Respondent/Defacto 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. 472 of 2016 on the file of the first respondent police and quash the same as against the petitioners.

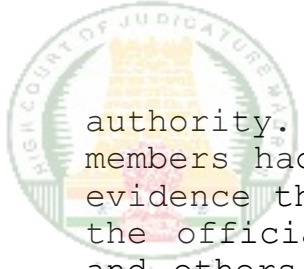
For Petitioners : Mr.S.M.A.Jinnah
For Respondent : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report in Crime No. 472 of 2016 on the file of the first respondent police for the offences under Sections 188,429,341,353 of IPC and 11(1)(I) of Prevention of Cruelty of animals.

2. The case of the prosecution is that on 15.09.2016 the petitioners along with others took the camels to sacrifice them for their god as per the ethics in a vehicle and on information the second respondent followed the aforesaid vehicle and therefore the accused has driven his vehicle very rashly due to which the camels got injury. On the basis of the above said allegation, the respondent police registered the complaint and filed a First Information Report against the petitioners for the offences under Sections 188,429,341,353 of IPC and 11(1)(I) of Prevention of Cruelty of animals in Crime No.472 of 2016.

3. The learned counsel appearing for the petitioners submitted that the petitioners are innocents. 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 submitted that the petitioners or any other members had never involved in any unlawful assembly and there is no evidence that the petitioners or others restrained anybody. However, the officials of the respondent police had beaten the petitioners and others. When there was lot of members involved in the protest, the respondent police had registered this case, under Sections 188, 429, 341, 353 of IPC and 11(1)(I) of Prevention of Cruelty of animals as against the petitioners and others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate (Crl.Side) submitted that on 15.09.2016 the petitioners along with others took the camels to sacrifice them for their god as per the ethics in a vehicle and on information the second respondent followed the aforesaid vehicle and therefore the accused has driven his vehicle very rashly due to which the camels got injury getting any permission and there are specific allegations as against the petitioners 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. Heard Mr.S.M.A.Jinnah, learned counsel for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent.

6. On perusal of the charge, it is seen that 15.09.2016 the petitioners along with others took the camels to sacrifice them for their god as per the ethics in a vehicle and on information the second respondent followed the aforesaid vehicle and therefore the accused has driven his vehicle very rashly due to which the camels got injury. Therefore the respondent police levelled the charges under Sections 188, 429, 341, 353 of IPC and 11(1)(I) of Prevention of Cruelty of animals. as against the petitioners and others. 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 to tender 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.

7. The only question for consideration is that whether the registration of case under Sections 188, 429, 341, 353 of IPC and 11(1)(I) of Prevention of Cruelty of animals, 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-

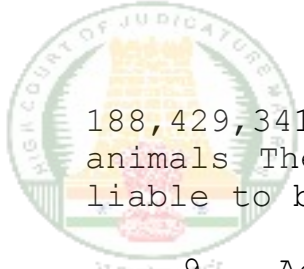
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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 offences under Sections 188, 429, 341, 353 of IPC and 11(1)(I) of Prevention of Cruelty of animals. 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 Sections 188, 429, 341, 353 of IPC and 11(1)(I) of Prevention of Cruelty of animals. Further, the complaint does not even state as to how the protest formed by the petitioners and others is an unlawful process and does not satisfy the requirements of Sections



188,429,341,353 of IPC and 11(1)(I) of Prevention of Cruelty of animals. Therefore, the final report cannot be sustained and it is liable to be quashed.

9. Accordingly, the proceedings in Crime No. 472 of 2016, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

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To:

1. The Inspector of Police
Nagamalai Pudhukottai Police Station
Nagamalai Pudhukottai
Madurai District
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1CC TO MR.S.M.A.JINNAH, Advocate Sr. No. 97492

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