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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.10.2019**

CORAM:

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

CRL.O.P(MD) No.11970 of 2018

and

CrI.M.P(MD)Nos.5439 and 5440 of 2018

1.Vaigai Selvan

2.Suresh @ Yuvan

... Petitioners 1&2/Accused Nos.1&2

Vs.

1.State rep by

The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

(In Crime No.373 of 2016)

... 1st Respondent/Complainant

2.A.K.Mani

... 2nd Respondent /De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in S.T.C.No.2142 of 2017 on the file of the Judicial Magistrate, Aruppukottai in Crime No.373 of 2016 on the file of the first respondent police an quash the same.

For Petitioner	: Mr.G.Prabhakaran
For R1	: Mr.K.Suyambulinga Bharathi Government Advocate(Crl.Side)
For R2	: Mr.A.Bhaskaran

O R D E R

This Criminal Original Petition has been filed to quash proceedings in S.T.C.No.2142 of 2017 on the file of the Judicial Magistrate, Aruppukottai in Crime No.373 of 2016 on the file of the first respondent police, as against the petitioners.

2.The case of the prosecution is that the pamphlets containing false information were distributed by A3 to A6 on 14.05.2016 at Aruppukottai Town. Further it is alleged that the pamphlets are distributed at the instigation of petitioners herein and thereby all the accused are violated the election code. The petitioners herein are not in the scene of occurrence, but the petitioners were arrayed as accused because of political motive in the complaint. Under these circumstances, the first respondent filed charge sheet in Crime No.373 of 2016 and the same was taken on file in S.T.C.No.2142 of 2017 on the file of the learned Judicial



Magistrate, Aruppukottai. The said criminal proceedings is under challenge in this criminal original petition.

3.The learned counsel appearing for the petitioner would submit that the petitioners are brothers and prominent members of All India Anna Dravida Munnetra Kalagam (AIADMK) for several years. The first petitioner had won in the constituency of Aruppukottai in the Assembly Election for the year 2011 and served as Minister of Tamil Nadu Government. In view of a strong contest took place in the year 2016 election with the DMK political party, PW.12 had adopted illegal methods to win the election for the year 2016 and as part of the said conspiracy, various false complaints were given against the first petitioner and his followers, which includes the FIR in Crime No.373 of 2016 on the file of the first respondent police station. The second respondent herein is the handmaid of PW.12 and upon his false complaint, the FIR and the present charge sheet were filed without any material evidence for the offences under Sections 188, 171(G), 506(i), 120(b) r/w 109 of IPC and under Section 127(A) (1) r/w Section 125 of the Representation of People Act, 1951. Therefore, he prayed for quashment of the criminal proceedings.

4.Per contra, the learned Additional Public Prosecutor would submit that 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 both sides and perused the materials available on record.

6.On a perusal of the charge as against the petitioners is concerned, the first respondent levelled the charge under Section 188, 171(G), 506(i), 120(b) r/w 109 of IPC and under Section 127(A) (1) r/w Section 125 of the Representation of People Act, 1951 as against the petitioners. It is seen from the charge sheet that the pamphlets containing false information were distributed by A3 to A6 on 13.05.2016 at Aruppukottai Town. Further it is alleged that the pamphlets are distributed at the instigation of petitioners herein and thereby all the accused are violated the election code. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charge 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 188, 171(G), 506(i), 120(b) r/w 109 of IPC and under Section 127(A) (1) r/w Section 125 of the Representation of People Act, 1951, 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-

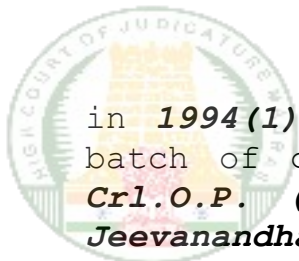
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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. The learned counsel for the petitioner relied upon a judgment reported in **Mahaboob Basha Vs. Sambanda Reddiar and others** reported



in **1994(1) Crimes, Page 477**. He also relied upon a judgment in a batch of quash petitions, reported in **2018-2-L.W. (Cr1.) 606** in **Crl.O.P. (MD)No. 1356 of 2018**, dated 20.09.2018 in the case of **Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District**, and this Court held in Paragraph-25, as follows :-

"25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;
and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.



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e) The promulgation issued under Section 30 (2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1) (a) (i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1) (a) (i) of Cr.P.C.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 188, 171(G), 506(i), 120(b) r/w 109 of IPC and under Section 127(A) (1) r/w Section 125 of the Representation of People Act, 1951. 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.

11. Accordingly, the proceedings in S.T.C.No.2142 of 2017 on the file of the learned Judicial Magistrate, Aruppukottai, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



- 1.The Judicial Magistrate,
Aruppukottai.
2. The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar
3. The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.BASKARAN, Advocate (SR-92877[F] dated 18/10/2019)
+1 CC to Mr.G.PRABHAKARAN, Advocate (SR-93196[F] dated 21/10/2019)

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