



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

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

CRL.O.P (MD) No.12389 of 2018

and

CRL.M.P. (MD) .Nos.5627 and 5628 of 2018

WEB COPY

- 1.Sankar
- 2.Velupandian
- 3.Pandi
- 4.Thalavai
- 5.Venkatesh

... Petitioners/Accused Nos.1 to 5
Vs.

1.The State rep. by,
The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
Tirunelveli.
(Crime No.608 of 2017) ...1st Respondent/Complainant

2.Balasubramanian,
HC-1338,
Junction Traffic Police Station,
Tirunelveli City,
Tirunelveli. ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C.No.32 of 2018 on the file of the Judicial Magistrate No.IV, Tirunelveli, Tirunelveli District in connection with Crime No.608 of 2017 on the file of the Inspector of Police, Tirunelveli Junction Police Station, Tirunelveli City, Tirunelveli District and quash the same as devoid of merits.

For Petitioners : Mr.S.Palani Velayutham
For 1stRespondent: 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 C.C.No.32 of 2018 on the file of the learned Judicial Magistrate No.IV, Tirunelveli, Tirunelveli District in connection with Crime No.608 of 2017 on the file of the Inspector of Police, Tirunelveli Junction Police Station, Tirunelveli City, Tirunelveli District .

2.The case of the prosecution is that on 13.09.2017, at about 11.40 hrs, when the second respondent/Head Constable on his duty near Junction Traffic Police Station, the petitioners came in a four



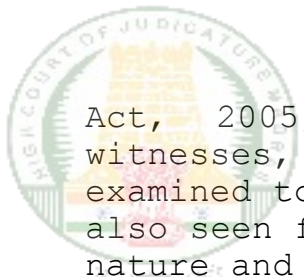
wheeler bearing Registration No.TN 72 BM 9999 and raised slogans against the Hon'ble Chief Minister of Tamil Nadu and suddenly the effigy of the Hon'ble Chief Minister of Tamil Nadu was burnt in prohibited area, while prohibitory order was in force. On the basis of the above said allegations, the first respondent police registered the complaint in Crime No.608 of 2017 for the offences under Sections 143, 188 and 285 of IPC and Section 7(1)(a) of Criminal Law Amendment Act, 2005, as against the petitioners and filed the charge sheet against these petitioners for the offences under Sections 143, 188, 285 I.P.C and Section 7(1)(a) of Criminal Law Amendment Act, 2005, and the same was taken cognizance by the learned Judicial Magistrate No.IV, Tirunelveli, Tirunelveli District. The said criminal proceedings is under challenge in this Criminal Original Petition.

3. According to the petitioners, the petitioners are innocent persons. 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 petitioners would submit 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 second respondent police had registered this case as against the petitioners. Therefore, he sought for quashing the proceeding.

4. The learned Government Advocate(Crl.Side) would submit the petitioners came in a four wheeler bearing Registration No.TN 72 BM 9999 and raised slogans against the Hon'ble Chief Minister of Tamil Nadu and suddenly the effigy of the Hon'ble Chief Minister of Tamil Nadu was burnt in prohibited area, while prohibitory order was in force 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.Perused the material documents available on record.

6.On perusal of the charge, it is seen that the petitioners came in a four wheeler bearing Registration No.TN 72 BM 9999 and raised slogans against the Hon'ble Chief Minister of Tamil Nadu and suddenly the effigy of the Hon'ble Chief Minister of Tamil Nadu was burnt in prohibited area, while prohibitory order was in force. Therefore, the respondent police levelled the charges under Sections 143, 188, 285 I.P.C and Section 7(1)(a) of Criminal Law Amendment



Act, 2005, 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 143, 188, 285 I.P.C and Section 7(1) CLA Act, 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 143, 188, 285 I.P.C and Section 7(1) CLA Act. He is not a competent person to register FIR for the offence 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. Therefore, the final report cannot be sustained and it is liable to be quashed.

9. Accordingly, the proceedings in C.C.No.32 of 2018 on the file of the learned Judicial Magistrate No.IV, Tirunelveli, Tirunelveli District, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

vsg

To:

- 1.The Judicial Magistrate No.IV,
Tirunelveli,
Tirunelveli District.
- 2.The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
Tirunelveli.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-100509[F] dated 22/11/2019)

CRL.O.P(MD) No.12389 of 2018

and

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