



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

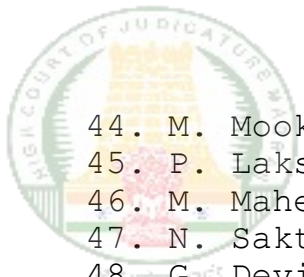
DATED: 07.11.2019

CORAM:

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

**Cr1.O.P. (MD) .No. 16175 of 2019**

1. S. Boominathan
2. R. Murugan
3. Tamilarasu
4. Alagupandi
5. Veerapandiyan
6. Kathiravan
7. M. Murugesan
8. Misa.Ra.Ganeshan
9. Gopi
10. Murugesan
11. Valzivittan
12. Velandi
13. P. Kalimuthu
14. Madurai Veeran
15. N. Kathivel
16. S. Kumaravel
17. A. Mariselvam
18. K.K. Kalimuthu
19. S.M.P. Kannan
20. N. Pandi
21. Pitchaimuthu
22. C. Moorthy
23. Sonaimuthu
24. Ma.Ka. Ananth
25. S. Pandivel
26. A. Seenivasan
27. S. Thambidurai
28. M. Ayyanar
29. M. Eswaran
30. P. Muthukumar
31. A. Pavithrakannan
32. M. Maharaja
33. P. Dinesh
34. Arumugam
35. J. Edwin Chellaiah
36. M. Murugan
37. Ajithikumar
38. Seenivasan
39. Samayan
40. R. Ganeshan
41. K. Valli
42. M. Mari
43. VM. Rathinam



44. M. Mookkammal
45. P. Lakshmi
46. M. Maheswari
47. N. Sakthi @ Sathieswari
48. G. Devi
49. R. Dhanalakshmi
50. R. Chithra
51. A. Muthulakshmi
52. S. Ponnuthai
53. M. Kanniyammal
54. P. Lakshmi
55. A. Malarvizhi
56. S. Rajammal
57. M. Nahalakshmi
58. N. Kannammal
59. A. Panchavarnam
60. S. Murugammal
61. G. Murugeshwari
62. S. Sowndaravalli
63. V. Pootchiyammal
64. R. Valli
65. V. Umadevi
66. M. Pandiyammal
67. P. Aathilakshmi
68. R. Krishnaveni
69. K. Palammal

... Petitioners/Accused  
No.1 to 58 and 60 to 70

Vs.

1. State represented by Sub Inspector of Police,  
Teppakulam Police Station (L & O),  
Madurai District, (Crime No.1209 of 2016) ...Respondents/  
Complainant

2. Michel Jerold,  
Sub-Inspector of Police,  
B-3 Teppakulam Police Station (L & O),  
Madurai District. ...Respondents/Defacto  
Complainant

**PRAYER :** Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the charge sheet in STC No.3 of 2017 on the file of the learned Judicial Magistrate No.I, Madurai in Crime No.1209 of 2016 dated 15.08.2016 on the file of the first respondent Police for alleged offences under Section 143, 147 and 188 of IPC and quash the same as illegal as for as petitioners are concerned.

For Petitioners : Mr.T. Thirumurugan

**ORDER**

The Criminal Original Petition has been filed to quash the charge sheet in STC No.3 of 2017 on the file of the learned Judicial Magistrate No.I, Madurai in Crime No.1209 of 2016 dated 15.08.2016 on the file of the first respondent for alleged offences under Section 143, 147 and 188 of IPC.

2. The case of the prosecution is that the on 15.08.2016 at about 12.00 p.m., the petitioners were gathered and conducting demonstration at near A.P. Tex, Madurai and demanding to take necessary action against the Inspector who is working with the first respondent police station and assaulted the first petitioner herein while the Police Act was in force. On the basis of the above said allegations, the respondent police registered the complaint and filed a charge sheet against these petitioners for the offences under Sections 143, 147 and 188 of IPC in Crime No.1209 of 2016 the same was taken cognizance by the learned Judicial Magistrate No.I, Madurai. The said criminal proceedings is under challenge in this Criminal Original Petition.

3. According to the petitioner, 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 first petitioner was assaulted by the Inspector of Police who was working with the first respondent police station and for that reason, some of the persons were questioned his illegal activities. On precautionary measures, the respondent police had registered this case, under Section 143, 147 and 188 of IPC as against the petitioners. Therefore, they sought for quashing the proceeding.

4. The learned Government Advocate(Crl.Side) submitted that the petitioners were gathered and conduct demonstration 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 have gathered and conducted demonstration. Therefore, the respondent police levelled the charges under Sections 143, 147 and 188 of I.P.C. 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 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 :-

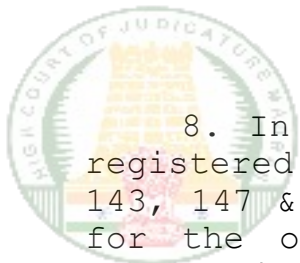
*"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Courts shall take cognizance-*

*(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, 147 & 188 of 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 petitioners have violated the election code of conduct 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. 3 of 2017 in Crime No. 1209 of 2016, is quashed and the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.1, Madurai.
2. The Sub Inspector of Police,  
Teppakulam Police Station (L & O),  
Madurai District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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VB(27.11.2019) 5P 4C