



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.11.2019

CORAM:

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

Crl.O.P. (MD).No. 16742 of 2019

and Crl.M.P. (MD) No. 9923 of 2019

1. Kadhar Oli
2. Moul ana Ushen @ Nila Travels Ushen
3. Abdul Lathif
4. Mohamed Iliyas @ Iliyas
5. Raham athullah
6. Mohamed
7. Nishar Ali
8. Syed Abuthahir

... Petitioners

Vs.

1. State Rep. by
The Inspector of Police,
City South Police Station,
Dindigul.
(In Crime No. 376 of 2013).
2. P. Savadappan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C. No. 122 of 2015 on the file of the learned Judicial Magistrate No.III, Dindigul in Crime No. 376 of 2013 on the file of the respondent police and quash the same as illegal in so far as the petitioners herein is concerned.

For Petitioners : Mr. A. Sheik Nasurdeen

For Respondent-1 : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet in C.C. No. 122 of 2015 on the file of the learned Judicial Magistrate No.III, Dindigul in Crime No. 376 of 2013 on the file of the respondent police as against the petitioners.

2. The case of the prosecution is that the petitioners were conducted agitation for removing an encroachment in Wakf Properties and also caused serious disturbance for free flow of vehicles. 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, 188 of IPC in Crime No. 376 of 2013 the same was taken cognizance by the learned Judicial Magistrate No.III, Dindigul. 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 regarding violating the election code of conduct is false and

baseless. Therefore, they sought for quashing the proceeding.

4. The learned Government Advocate (Crl. Side) submitted that the petitioners have violated the election code of conduct 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 caused disturbance for free flow of vehicles. Therefore, the respondent police levelled the charges under Sections 143, 188 of IPC 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 Section 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, 188 & 285 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. Therefore, the final report cannot be sustained and it is liable to be quashed. Further, the complaint does not even state as to how the petitioners have caused disturbance for free flow of vehicles 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 C.C. No. 122 of 2015 in Crime No. 122 of 2015, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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To

1. The Judicial Magistrate No.III, Dindigul.
2. The Inspector of Police,
City South Police Station, Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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SMA/08/01/2020/3P/4C