



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.11.2019**

CORAM:

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

CRL.O.P(MD)No.17194 of 2019

and

Cr1.M.P(MD)Nos.10169 and 10171 of 2019

WEB COPY

1.S.R.Kumar
2.Marimuthu
3.Balakrishnan
4.Pandi

...Petitioners/Accused Nos.1 to 4

Vs.

1.State Rep. by
The Inspector of Police,
E-4, Government Rajaji Hospital Police Station,
Madurai City.
(In Crime No.1 of 2014)

...1st Respondent/Complainant

2.Deepa

... 2nd Respondent/Defacto Complainant

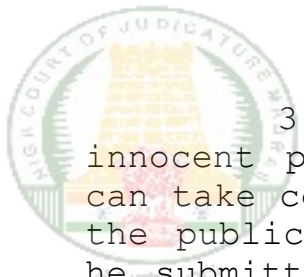
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.333 of 2015 on the file of the Judicial Magistrate No.II, Madurai and quash the same in respect of the petitioners as illegal.

For Petitioners : Mr.C.Mayilvahana Rajendran
For R1 : 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.333 of 2015 on the file of the Judicial Magistrate No.II, Madurai, as against the petitioners.

2. The case of the prosecution is that on 04.01.2014 the petitioners and others said to have decided to conduct procession carrying dead body and the same was objected by the Inspector of Police citing the prohibitory order. It is alleged that the petitioners and others told the Inspector of Police that they would conduct procession and damage the public property. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioners and others for the offences under Sections 143, 188, 341, 353 of IPC and 7 (1) (a) of Criminal Law Amendment Act in C.C.No.333 of 2015, on the file the learned Judicial Magistrate No.II, Madurai.



3. According to the petitioners, the petitioners are an innocent persons. As per 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 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 respondent police had registered this case, under Sections 143, 188, 341, 353 of IPC and 7 (1) (a) of Criminal Law Amendment Act, as against the petitioners. Therefore, they sought for quashing the proceeding.

4. The learned Government Advocate (Crl.Side) submitted that the petitioners and others said to have decided to conduct procession carrying dead body and the same was objected by the Inspector of Police citing the prohibitory order. It is alleged that the petitioners and others told the Inspector of Police that they would conduct procession and damaged the public property, without any permission 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. Heard Mr.C.Mayilvahan Rajendran, learned counsel for the petitioners and Mr.K.Suyambuling Bharathi, learned Government Advocate (Crl.side) appearing for the respondent.

6. On perusal of the F.I.R, it is seen that the petitioners and others said to have decided to conduct procession carrying dead body and the same was objected by the Inspector of Police citing the prohibitory order. It is alleged that the petitioners and others told the Inspector of Police that they would conduct procession and damaged the public property, without any permission in prohibited area, while prohibitory order was in force. Therefore, the respondent police levelled the offences under Sections 143, 188, 341, 353 of IPC and 7 (1) (a) of Criminal Law Amendment Act 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 and 188 IPC, 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 offence 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 under Sections 143, 188, 341, 353 of IPC and 7 (1) (a) of Criminal Law Amendment Act. 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 petitioner and others have attempted to stage demonstration in prohibited area 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 C.C.No.333 of 2015 on the file of the Judicial Magistrate No.II, Madurai, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

vsd

To

1.The Judicial Magistrate No.II, Madurai

2.The Inspector of Police,

E-4, Government Rajaji Hospital Police Station,
Madurai City.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-100498[F]
dated 22/11/2019)

CRL.O.P (MD) No.17194 of 2019

and

Cr1.M.P (MD) Nos.10169 and 10171 of 2019

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