



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2019

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRL.O.P(MD) No.18251 of 2019

Sivakumar @ Mayil

... Petitioner / Accused No.37

Vs.

1. The Superintendent of Police
Dindigul District, Dindigul

2. The Inspector of Police
Kodaikanal Police Station
Dindigul District

... Respondents / Complainant

3.A. Pandi
Head Constable
Kodaikanal Police Station
Kodaikanal,
Dindigul District

... Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in Crime No. 93 of 2017 on the file of the second respondent police station and quash the same as it has no prima facie case as against the petitioners.

For Petitioner : Mr.A.Atham Ali

For Respondents : Mrs.S. Bharathi
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the Crime No. 93 of 2017 on the file of the respondent

2. The case of the prosecution is that on 13.03.2017 at 10.00a.m the petitioner without any approval from the second respondent in violation of 30(2) of Police Act illegally gathered before the ration shop and made slogans expressing dissatisfaction



on the governance and claiming for minimum rights that are guaranteed to an ordinary citizens against the illegal activities for not supplying necessary items which was supplied to the ration shops. On the basis of the above said allegation, the respondent police registered the complaint and filed a First Information Report against the petitioner and others for the offences under Sections 143, and 188 IPC in Crime No.93 of 2017.

3. The learned counsel appearing for the petitioner submitted that the petitioner is 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 petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. However, the officials of the respondent police had beaten the petitioners and others. When there was lot of members involved in the protest, the respondent police had registered this case, under Section 143, and 188 IPC as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate(Crl.Side) submitted that on 13.03.2017 at 10.00a.m the petitioner without any approval from the second respondent in violation of 30(2) of Police Act illegally gathered before the ration shop and made slogans expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizens against the illegal activities for not supplying necessary items which was supplied to the ration shops 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.S.Atham Ali, learned counsel for the petitioners and Mrs.S.Bharathi, learned Government Advocate(Crl.Side) appearing for the respondents.

6. On perusal of the charge, it is seen that on 13.03.2017 at 10.00a.m the petitioner without any approval from the second respondent in violation of 30(2) of Police Act illegally gathered before the ration shop and made slogans expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizens against the illegal activities for not supplying necessary items which was supplied to the ration shops without permission getting prior permission from the authority. Therefore the respondent police levelled the



charges under Sections 143 and 188 of I.P.C. as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioner. 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.

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8. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143 and 188 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 Sections 143 and 188 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioner and others is an unlawful protest 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 Crime No. 93 of 2017 is quashed insofar as the petitioner concerned and the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Superintendent of Police
Dindigul District, Dindigul
2. The Inspector of Police
Kodaikanal Police Station
Dindigul District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1 CC to M/s.S.ATHAMALI, Advocate (SR-103894[F] dated 06/12/2019

CRL.O.P(MD) No.18251 of 2019
06.12.2019

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