



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.(MD).No.18476 of 2019

1.R.Anand Sekaran
2.P.Sarathi
3.P.Ramakrishnan

..Petitioners/Accused 2 to 4

Vs.

1.State through,
The Inspector of Police,
South Police Station,
Tuticorin,
(Crime No.453 of 2016)

2.K.Suresh

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.375 of 2019 on the file of the learned Judicial Magistrate I, Tuticorin and quash the same against the petitioners/Accused in S.T.C.No.375 of 2019 on the file of the learned Judicial Magistrate I, Tuticorin.

For Petitioners : Mr.KA.Ramakrishnan

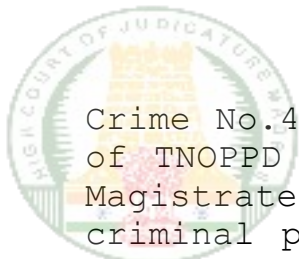
For 1stRespondent : Mrs.S.Bharathi

Government Advocate (Crl. Side)

O R D E R

This quash petition is filed to quash the criminal proceedings in S.T.C.No.375 of 2019 on the file of the learned Judicial Magistrate I, Tuticorin, thereby having been taken cognizance for the offences under Section 188 of IPC and Section 3 of TNOPPD Act, as against the petitioners and other.

2.The case of the prosecution is that on 15.03.2016, the second respondent had found that the petitioners, who belong to DMK party, have opened election party booth office without obtaining permission by violating the Election code of conduct. Hence, the second respondent lodged a complaint before the first respondent police and first respondent police registered a case in



Crime No.453 of 2016 for offences under Section 188 of IPC and 3 of TNOPPD Act, and the case was taken cognizance by the Judicial Magistrate I, Tuticorin, in S.T.C.No.375 of 2019. The said criminal proceedings is under challenge in this criminal original petition.

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3.The learned counsel appearing for the petitioners would submit that the petitioners have not committed any offences as alleged by the prosecution. Due to political enmity, a false case has been foisted. The petitioners have not violated any rules and model code of conduct relating to election. He would further contend that the charges against the petitioners were not attracted, since there is no allegation against the petitioners that they have violated the election rules/model code of conduct. Further, he would contend that there is absolutely no witnesses have spoken about the occurrence and to connect the petitioners, there are no materials to proceed with the trial. When there is no material to proceed with the trial, the petitioner unnecessarily would not have put them an ordeal trial. Therefore, he prayed for quashment of the criminal proceedings.

4.Per contra, the learned Government Advocate(Crl.Side) would submit that there are specific allegations as against the petitioners to proceed with the trial. Further, he would submit that the petitioners are a habitual offender by committing these kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl.Side) appearing for the first respondent/State and perused the materials available on record.

6.On a perusal of the charge as against the petitioners are concerned, the first respondent levelled the charge under Section 188 of I.P.C. as against the petitioners. It is seen from the charge that on 15.03.2016, the second respondent had found that the petitioners, who belong to DMK party, have opened election party booth office without obtaining permission by violating the Election code of conduct. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charge 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 188 of 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 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.The learned counsel for the petitioners, in support of his contentions, relied upon a judgement in a batch of quash petitions, reported in **2018-2-L.W. (Cr1.) 606** in **Crl.O.P. (MD) No. 1356 of 2018**, dated 20.09.2018 in the case of **Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District**, and this Court held in Paragraph-25, as follows :-

"25.In view of the discussions, the

following guidelines are issued insofar as an



offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and



in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.

He also relied upon the similar facts of the case covered under recent judgment of this Court in the case of **Raja Vs. State** reported in **(2019) 4 MLJ (Cr1) 175**.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Section 188 of IPC and 3 of TNOPPD 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 protest formed by the petitioners and other 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.

10. Accordingly, the proceedings in S.T.C.No.375 of 2019 on the file of the learned Judicial Magistrate I, Tuticorin is quashed and the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar(CS)



vsg
To

1.The Judicial Magistrate I,
Tuticorin.

2.The Inspector of Police,
South Police Station,
Tuticorin.

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

+1 cc to Mr.KA.Ramakrishnan , Advocate SR.No.104601

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