

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6866 of 2020
and
Crl.M.P.No.3757 of 2020

Asathullah

... Petitioner/Accused

Vs.

State rep by its,
The Inspector of Police,
Ambur Town Police Station,
Vellore.
(Crime No.580 of 2019)

...Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in Crime No.580 of 2019 on the files of the respondent herein and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.I.Abdul Basith
For Respondent : Mr.M.Mohamed Riyaz

O R D E R

The petitioner/accused in Crime No.580 of 2019 for the offence under Sections 143 and 188 of IPC, has filed this quash petition.

2.The gist of the case is that on 06.12.2019 at between 04.40 and 04.45 p.m., the Inspector of Police, Ambur Police Station along with his officials were on the regular patrol duty. While so near Ambur Bus Stand, the petitioner, functionary of SDPI Party along with 131 men and two women, were holding a protest against demolition and destruction of Babri Masjid without any prior permission. Despite warning by the Inspector of Police, Ambur, they attempted to hold the protest. Hence, the above case came to be filed.

3.The contention of the learned counsel for the petitioner is that the registration of FIR in Crime No.580 of 2019 for the offence under Section 143 and 188 of IPC, is in violation of Section 195(1)(a)(i) of Cr.P.C and against the guidelines of this Court in the case of "Jeevanandham and Ors. Versus State and Ors. reported in MANU/TN/5423/2018". He further submitted that the respondent initiated a suo-moto criminal prosecution against the petitioner on the allegation

that the petitioner along with 133 persons had protested in public, without permission. The FIR neither revealed any specific role of the petitioner nor attracted punishable offence under Section 143 and 188 of IPC. The registration of FIR is in violation of the petitioner's fundamental rights guaranteed under article 14, 19(1)(a), 19(1)(b) and 21 of Constitution of India. Further, in the FIR there, is no mention as to how the assembly formed by the petitioner is an unlawful assembly and when there was no prohibitory order declared and communicated, there is no promulgation of any order which has been violated by the petitioner. Further, without written complaint of public servant, no FIR can be registered for offence under Section 188 of IPC. He further submitted that the complainant is none other than the Inspector of Police, Ambur Police Station, who registered a complaint and investigated the case, which is prohibited in law.

4.The learned counsel for the petitioner relied upon the citation of Hon'ble Apex Court in "Himatlal K.Shah Versus Police Commissioner, Ahmedabad", wherein it is held that "..... State cannot by law abridge or take away the right of assembly by prohibition assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order." Further, he relied upon the decisions of this Court in "Jeevanandham and Ors. Versus State and Ors. reported in MANU/TN/5423/2018" and in "Mohamed Nazim Versus State reported in MANU/TN/1906/2019".

5.The learned Additional Public Prosecutor appearing for the respondent submitted that on 6th December 2019, there was a prohibitory order and without permission, the petitioner being office bearer of a political outfit, assembled in public and caused inconvenience to the public and attempted to assemble in the middle of the road and cause disobedience to the order promulgated by the public servant. Despite warning of the police, they continued to conduct the protest. Hence, a case, came to be registered. The learned Additional Public Prosecutor admits that the complainant in this case is none other than the Inspector of Police, Ambur Police Station. Further, for registration of the FIR under Section 188 of IPC, the sin quo non is a written complaint of the public servant concerned. In this case, the Inspector of Police is not the public servant concerned.

6.Considering the rival submission and on perusal of the materials it is seen that the Inspector of Police, Ambur Police Station, had registered the above case and he is the complainant and investigating officer as well. As per Section 195 (1)(a)(i) of Cr.P.C., there is a specific bar for taking cognizance of the offence under Section 188 of IPC. Further it has been categorically held that the word used under

Section 188 of IPC is "public servant lawfully empowered" and the word used in Section 195(1)(a)(i) is "public servant concerned". The very terminology that in both the provision makes it clear that not all public servants falling under Section 21 of IPC can be a complainant, it is only the public servant who has been specifically authorized, by a specific order in this regard, who can file a written complaint before the concerned Judicial Magistrate Court. Thus there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. In this case, admittedly there is no such complaint which is *sin quo non* to register the case and to proceed further.

7. In view of the above, the continuation of the investigation against the petitioner would amount to abuse of process of law. Hence, the investigation in Crime No.580 of 2019 on the file of the respondent is hereby quashed. This Criminal Original Petition is allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Ambur Town Police Station,
Vellore.

2. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.6866 of 2020

SSV(CO)
GN(31/07/2020)