

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

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

CRL.O.P.No.8462 of 2020

Thirukoti Baiarava Swamy-M/62yrs,
S/o. Mr.Chinna Venkanna,
No.59, Canteen Street,
Puducherry-605 001 ... Petitioner

Vs.

1.The Union Territory of Puducherry Rep. By,
The Station House Officer,
Yanam Police Station,
Yanam.
Cr. No.26 of 2016

2.Mr.C.H. Jogi Raju-M-Age not known,
Sector Officer-I,
Yanam Assembly Constituency,
Yanam. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and to quash the proceedings in S.T.C. No.20 of 2018 pending on the file of the Learned District Judicial Magistrate Court, Yanam.

For Petitioner : Mr.A.Kripakaran

For Respondent : Mr.V.Balamiurugane
Additional Public Prosecutor
Puducherry.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C. No.20 of 2018 pending on the file of the Learned District Judicial Magistrate Court, Yanam and thereby taken cognizance for the offence under Section 143, 294(b), 188 of IPC, r/w 149 I.P.C.

2. The case of the prosecution is that on 03.05.2016, at about 9.40p.m the petitioner along with 100 other persons unlawfully gathered at the residence of Thiru Malladi Krishna

Roa at Yerra Gardens and abused the congress candidate using filthy language. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 294(b), 188 of IPC r/w Section 34 of IPC in Cr.No.26 of 2016 and after conducting investigation the respondent police was pleased to file a final report in S.T.C.No.20 of 2018 pending on the file the learned Judicial Magistrate, Yanam for the offences under Section 143, 294(b), 188 of IPCr/w 149 IPC.

3. The learned counsel appearing for the petitioner submitted that the petitioner is a NR congress party candidate and the petitioner was elected in Yanam Constituency and after getting permission the petitioner along with their party men conducted the election campaign on 03.05.2016 in a peaceful manner. The learned counsel further submitted that the personal vengeance of the party men, a false complaint has lodged against the petitioner. 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 abused anybody. However, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 294(b), 188 of IPC r/w Section 34 of IPC in Cr.No.26 of 2016 and after conducting investigation the respondent police was pleased to file a final report in S.T.C.No.20 of 2018 pending on the file the learned Judicial Magistrate, Yanam for the offences under Section 143, 294(b), 188 of IPCr/w 149 IPC. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioner along with others abused the Congress candidates by using filthy language. 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. More over, the petitioner is an habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard Mr.A.Kripakaran, learned counsel for the petitioner and Mr.V.Balamurugane, learned Additional Public Prosecutor, Puducherry appearing for the respondents.

6. On perusal of the charge, it is seen that the petitioner and others unlawfully gathered at the residence of Thiru Malladi Krishna Roa at Yerra Gardens and abused the congress candidate using filthy language. Therefore, the

respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 294(b), 188 of IPC r/w Section 34 of IPC in Cr.No.26 of 2016 and after conducting investigation the respondent police was pleased to file a final report in S.T.C.No.20 of 2018 pending on the file the learned Judicial Magistrate, Yanam for the offences under Section 143, 294(b), 188 of IPCr/w 149 IPC as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence. 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.

8. The learned counsel for the petitioner relied upon a judgement in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994(1) Crimes, Page 477. He also relied upon a judgment in a batch of quash petitions, reported in 2018-2-L.W. (Crl.) 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.

9. 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 Section 188 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioners 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.

10. In this regard it is relevant to extract the Section 294 (b) of IPC.

"294. Obscene acts and songs –
Whoever, to the annoyance of others– (a)
does any obscene act in any public place,
or (b) sings, recites or utters any
obscene song, ballad or words, in or near
any public place, shall be punished with
imprisonment of either description for a
term which may extend to three months, or
with fine, or with both."

4. Admittedly, there is absolutely no words uttered by the petitioner as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out. It is relevant to rely upon the judgment reported in 1996(1) CTC 470 in the case of K.Jeyaramanuj Vs. Janakaraaj & anr., which held as follows :-

"To prove the offence under
Section 294 of IPC mere utterance of
obscene words are not sufficient but
there must be a further proof to
establish that it was to the
annoyance of others, which is lacking
in the case."

In view of the above facts, this judgment is squarely apply to the present case.

11. Accordingly, the proceedings in S.T.C.No.20 of 2018 on the file of the learned Judicial Magistrate, Yanam, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

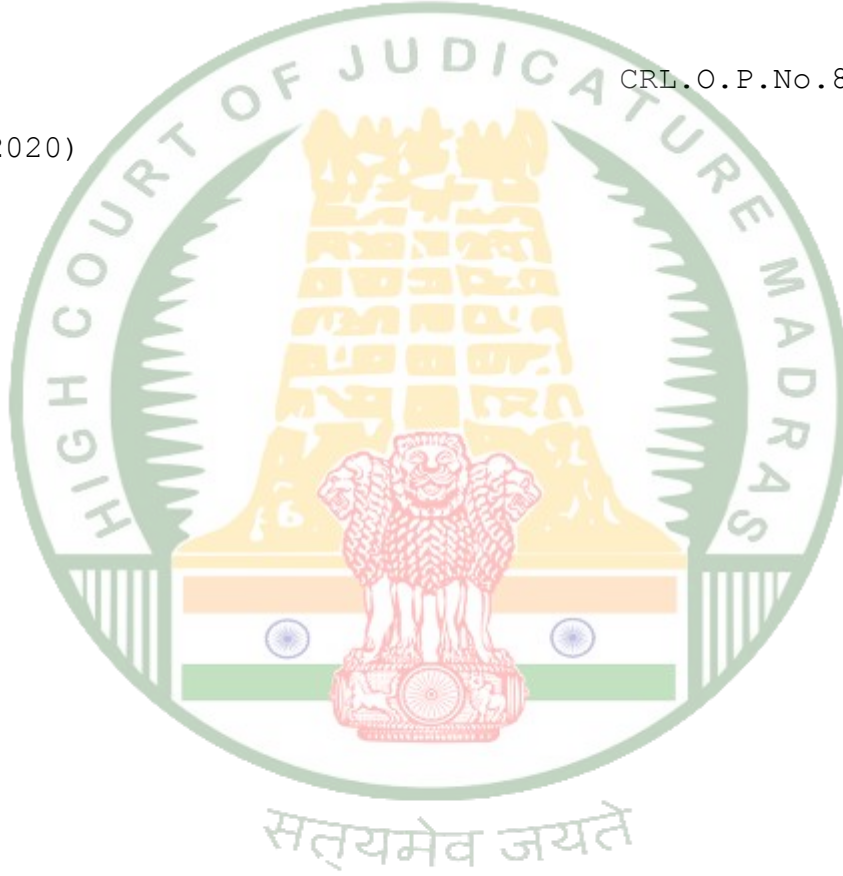
vsn

To

- 1.The Judicial Magistrate,
Yanam.
- 2.The Additional Public Prosecutor,
High Court, Madras.
- 3.The Station House Officer,
The Union Territory of Puducherry,
Yanam Police Station,
Yanam.

CRL.O.P.No.8462 of 2020

SR(CO)
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