IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.10484, 10486 and 10487 of 2020
& Crl.M.P.Nos.4429 to 4431 of 2020

1.Kalil
S/o Yunus
No.4, Nedun Theru Adavanthal Eari
Kabsa, Vellore.
2.Bazeer Ahamed
S/o Fida Ahmed
No.77, Adavandal Yeri Street
R.N.Palayam, Vellore.
3.Asif
S/o Abdul Munaf
No.6, Otthavadai Street
R.N.Palayam, Vellore.
4.Fayas Ahamed
S/o Muhammed Yacoob
No.91, Ahamed Bek Bangala Street
Saidapet, Vellore. ... Petitioners in
Crl.O.P.No.10484 of 2020

1.Kalil
S/o Yunus
No.4, Nedun Theru Adavanthal Eari
Kabsa, Vellore.
2.Nashsath
S/o Moitheen
No.762, East 3rd Street
Mathina Nagar
Konavattam, Vellore. ... Petitioners in
Crl.O.P.No.10486 of 2020

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1.Kalil
S/o Yunus
No.4, Nedun Theru Adavanthal Eari
Kabsa, Vellore.
2.Bazeer Ahamed
S/o Fida Ahmed
No.77, Adavandal Yeri Street
R.N.Palayam, Vellore.

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3.Asif
S/o Abdul Munaf
No.6, Otthavadai Street
R.N.Palayam, Vellore.
4.Fayas Ahamed
S/o Muhammed Yacoob
No.91, Ahamed Bek Bangala Street
Saidapet, Vellore.
5.Kalith
D/o Hasan Mohammed
No.48/13, Gurusamy Street
Palanipet
Arakonam, Vellore. ... Petitioners in Crl.O.P.No.10487 of 2020

Vs.

The State rep. By its
The Sub-Inspector of Police,
Vellore South Police Station
Vellore.
(Cr.No.123/2020) ...Respondent in Crl.O.P.No.10484 of 2020

The State rep. By its
The Sub-Inspector of Police,
Vellore South Police Station
Vellore.
(Cr.No.131/2020) ...Respondent in Crl.O.P.No.10486 of 2020

The State rep. By its
The Sub-Inspector of Police,
Vellore South Police Station
Vellore.
(Cr.No.126/2020) ...Respondent in Crl.O.P.No.10487 of 2020

COMMON PRAYER: Criminal Original Petitions filed under Section 439 of Criminal Procedure Code, to call for the records relating to the cases in Cr.Nos.123/2020, 131/2020 and 126/2020 on the file of the respondent herein and quash the same as illegal.

For Petitioners in all Crl.O.P's : Mr.I.Abdul Basith

For Respondent in all Crl.O.P's : Mr.S.Karthikeyan
Additional Public Prosecutor

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COMMON ORDER

The Criminal Original Petitions have been filed to quash the proceedings in Cr.Nos.123/2020, 131/2020 and 126/2020 on the file of the respondent herein, for the offences under Sections 143 and 188 of I.P.C. as against the petitioners.

2. The case of the prosecution is that the petitioners were illegally assembled and organized dharna in the public road against the Citizenship Amendment Act, without getting prior permission from the concerned authority. 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 and 188 of IPC in Cr.Nos.123/2020, 131/2020 and 126/2020 on the file of the respondent herein.

3. The learned counsel appearing for the petitioners submitted that the petitioners are social activist and have been raising voice for the public cause and public welfare, whenever injustice and inaction of the government machineries. In order to draw the attention of the Central and State Governments, the petitioners along with several members had protested towards enactment of Citizenship Amendment Act. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also right to freely express once view or constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble that is so essential to a democracy. 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 petitioners or any other members had never involved in any unlawful assembly and there is no evidence that the petitioners 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 of IPC as against the petitioners and others. Therefore, he sought for quashing the proceedings.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioners along with others staged protest and there are specific allegations as against the petitioners to proceed with the case. 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

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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 petitioners are habitual offender by committing this kind of crimes. Therefore, he vehemently opposed to quash petition and prayed for dismissal of the same.

5. Heard Mr.I.Abdul Basith, learned counsel for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent.

6. On perusal of the charge, it is seen that the petitioners and others staged protest towards the enactment of Citizenship Amendment Act, without getting prior permission from the concerned authority. Therefore the respondent police leveled the charges under Sections 143 and 188 of I.P.C. as against the petitioners and others. 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 to tender 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 trends 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 :-

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"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 hall 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 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

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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

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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. Accordingly, the proceedings in Cr.Nos.123/2020, 131/2020 and 126/2020 on the file of the respondent herein is quashed and the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Sub-Inspector of Police,
Vellore South Police Station
Vellore.

2.The Additional Public Prosecutor
High Court of Madras.

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