

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.30498 of 2019

and

Crl.M.P.Nos.16518 & 16520 of 2019

M.Muralidharan ....Petitioner/Accused No.1

-Vs-

1.The Inspector of Police  
G-1 Vepery Police Station,  
Chennai - 600 007.  
Crime No.413 of 2017.

2.Varadhan ....Respondents/Complainant/  
Defacto complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of the CC.No.8030 of 2017 on the file of the learned II Metropolitan Magistrate Court, Egmore at Chennai and quash the same.

For Petitioner : Mr.B.Thiyagarajan

For Respondent : Mr.M.Mohamed Riyaz  
Additional Public Prosecutor for R1

ORDER

This petition has been filed by the accused No.1 to call for the records of the CC.No.8030 of 2017 on the file of the learned II Metropolitan Magistrate Court, Egmore at Chennai and quash the same.

2. The learned counsel for the petitioner has submitted that an FIR was registered in Cr.No.413 of 2017 against the petitioner herein under Sections 143, 341 and 188 of IPC. He further submitted that the complainant himself has proceeded to investigate the matter and filed the final report. Hence, the investigation is vitiated. He further submitted that based on the said final report, the learned II Metropolitan Magistrate, Egmore, Chennai has taken the case on file. He further submitted that as per Section 195(1)(a) of Cr.P.C., taking cognizance in respect of the offence under Section 188 IPC can be made only based on the complaint filed by the concerned Officer in writing but in this case, the said procedure has not been followed and on the contrary, the

respondent police filed a final report and based on the said police report, the learned II Metropolitan Magistrate, Egmore, Chennai, has taken the case on file and on that ground also, the proceedings against the petitioner in C.C.No.8030 of 2017 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai has to be quashed.

3. The learned Additional Public Prosecutor has fairly conceded that the Officer, who lodged the complaint against the petitioner has himself investigated the matter and filed the final report. Further, he fairly conceded that taking cognizance of the offence under Section 188 of IPC is barred by Section 195(1)(a) Cr.P.C., hence, he prayed to pass an appropriate order.

4. Section 195(1)(a) Cr.P.C. Reads thus:

"Section 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 Court shall take cognizance

(a) (i) if any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 to 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:"

5. From the aforesaid provision, it is clear that no Court shall take cognizance of the offences punishable under Sections 172 to 188 (both inclusive) of Indian Penal Code, except on the complaint in writing of the public servant concerned or of some public servant to whom he is administratively subordinate. In this case, no such complaint has been filed in respect of the offence under Section 188 IPC, but on the contrary, the respondent has filed a final report and based on the same, the Magistrate has taken the case on file.

6. Since taking cognizance of the case in respect of the offence under Section 188 IPC is not in accordance with the provision of Section 195(1)(a) Cr.P.C., the other offences under Sections 143 and 341 IPC are being ancillary offences, the entire final report is liable to be quashed. Apart from that it appears that the officer, who lodged the complaint has himself investigated the matter and filed a final report. On that ground, the investigation is vitiated and the said charge sheet is also liable to be quashed.

7. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners herein in C.C.No.8030 of 2017 alone quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

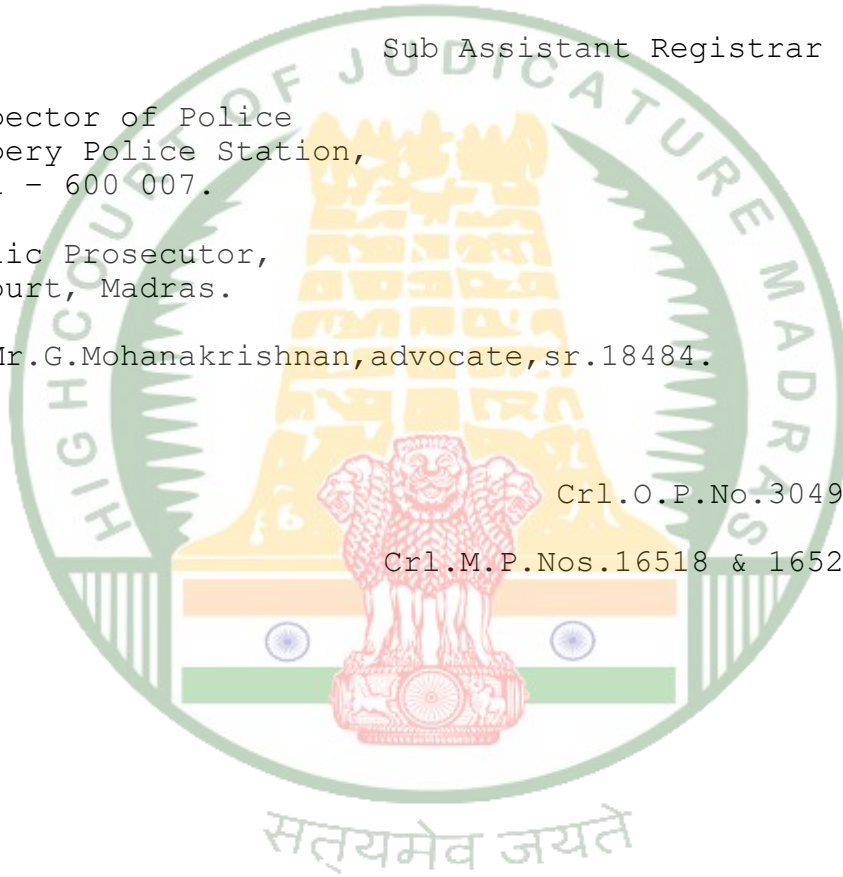
1.The Inspector of Police  
G-1 Vepery Police Station,  
Chennai - 600 007.

2.The Public Prosecutor,  
High Court, Madras.

+1 cc to Mr.G.Mohanakrishnan, advocate, sr.18484.

Sr(co)  
krd 26/6

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