

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HON'BLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P No.31451 of 2019
and
Crl.M.P No.17196 of 2019

1. Ilakiyan
2. Kumanan
3. Susikalaiarasan
4. Covaiguru
5. Magikarikalan
6. Singai
7. Santhoshmarudhu
8. Balakrishnan
9. Manickam
10. Ranjith
11. Sakthivel
12. Duraisamy
13. Covairaja
14. Balasingam
15. Covaimani
16. Chandrasekar
17. Ponvenkatesh
18. Covaikannagi
19. Rukmanidevi
20. Rani

.... Petitioner/Accused 1 to 20

-Vs-

State rep. by

The Inspector of Police,
C-1, Kattoor Police Station,
Coimbatore.

..Respondent/Defacto complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records of Final Report in connection with the case in STC.No.56 of 2018, on the file of the Judicial Magistrate II, Coimbatore and quash the same.

For Petitioners : Mr.D. Parventhan

For Respondent : Mrs.Saratha Devi
Government Advocate (Crl.Side)

ORDER

This Criminal original Petition has been filed to call for the entire records of Final Report in connection with the case in STC.No.56 of 2018, on the file of the Judicial Magistrate II, Coimbatore and quash the same.

2. The learned counsel for the petitioners has submitted that an FIR was registered in Cr.No.1158 of 2017 against the petitioners 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 Judicial Magistrate II, Coimbatore, 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 Judicial Magistrate II, Coimbatore, has taken the case on file and on that ground also, the proceedings against the petitioners in STC.No.56 of 2018 on the file of the Judicial Magistrate II, Coimbatore, 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 offence under Section 143 and 341 IPC are being an ancillary one, 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 FIR is also liable to be quashed.

7. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners herein in STC.No.56 of 2018 alone quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

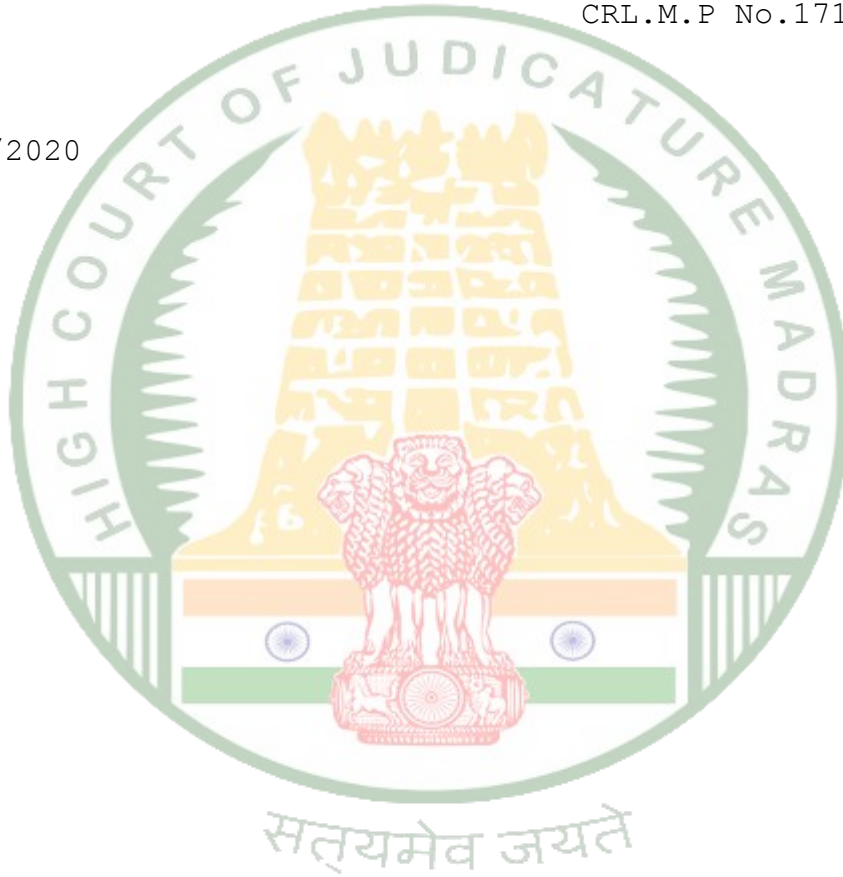
1. The Inspector of Police,
C-1, Kattoor Police Station,
Coimbatore.
2. The Judicial Magistrate II,
Coimbatore.
- 3.-Do- Thro The Chief Judicial Magistrate,
Coimbatore.

4.The Public Prosecutor,
High Court of Madras.

+lcc to Mr.D.Parventhan, Advocate Sr.4599

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and
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kk[co]
srg 03/03/2020



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