



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM:

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THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P. (MD) .No. 3233 of 2020

and

Crl.M.P. (MD) No. 1702 of 2020

K. Pandi ...Petitioner/Sole accused
Vs.

1. State rep. by
The Sub-Inspector of Police,
Melur Police Station,
Melur, Madurai District. ...R-1/Complainant
2. Assistant Agri Director,
Flying Squad B Team,
188 Melur Constituency Assembly,
Melur, Madurai District.
(Crime No. 439 of 2016) ... R-2/Defacto complainant

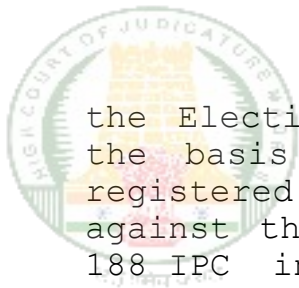
PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned FIR in Crime No. 439 of 2016 dated 14.05.2016 on the file of the Sub-Inspector of Police, Melur Police Station, Melur, Madurai District and quash the same as illegal, arbitrary and unsustainable in law.

For Petitioner: Mr.M. Thirunavukkarasu
For R-1 : Mrs.S.Bharathi,
Government Advocate (crl. Side)

O R D E R

The Criminal Original Petition has been filed to quash the impugned FIR in Crime No. 439 of 2016 dated 14.05.2016 on the file of the first respondent police.

2. The case of the prosecution is that on 14.05.2016 when the complainant police was on duty along with flying squad B team for Melur Legislative Assembly Constituent, on reliable information the respondent police have conducted search and a sum of Rs.5,10,490/- was seized from the petitioner's house and the same was handed over to the Assistant Treasury Officer at Melur as per instructions of



the Election Officer, Melur Legislative Assembly Constituency. On the basis of the above said allegation, the respondent police registered the complaint and filed a First Information Report against the petitioner for the offences under Sections 171(E) and 188 IPC in Crime No. 439 of 2016.

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3. The learned counsel appearing for the petitioner submitted that the petitioner is a innocent person. 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, in respect of offence under Section 171(E) of IPC, the maximum punishment is important which may extend to one year and as per Section 468(2)(c) of Cr.P.C, the Court shall take cognizance of an offence under Section 171(E) of IPC after the expiry of the period of limitation which is one year in this case. The case being registered on 14.05.2016, the final report has not been filed till date. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate (crl. Side) submitted that on the respondent police have conducted search on 14.05.2016 and a sum of Rs.5,10,490/-was seized from the petitioner's house and the same was handed over to the Assistant Treasury Officer at Melur as per instructions of the Election Officer, Melur Legislative Assembly Constituency and a case was registered on the same day. She would submit that there are specific allegations as against the petitioner to proceed with the trial. Further, she 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. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. When questioned, the learned Government Advocate submitted that the final report has not been filed till date.

6. Heard Mr.M.Thirunavukkarasu, learned counsel for the petitioner and Mrs.S.Bharathi, learned Government Advocate(Crl.Side) appearing for the respondents.

7. On perusal of the charge, the respondent police have conducted search and a sum of Rs.5,10,490/-was seized from the petitioner's house and the same was handed over to the Assistant Treasury Officer at Melur as per instructions of the Election Officer, Melur Legislative Assembly Constituency. Therefore the respondent police levelled the charges under Sections 171(E) and 188 of I.P.C. as against the petitioner. Except the official witnesses, no one has spoken about the occurrence and no one was examined to

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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.

8. The only question for consideration is that whether the registration of case under Section, 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-

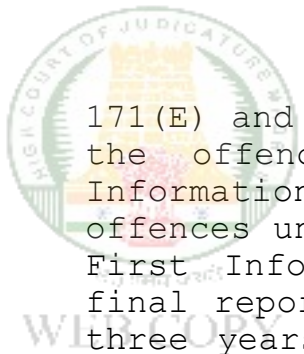
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections



171(E) 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, in this case though the First Information Report had been registered on 14.05.2016, the final report has not been filed till date even after the expiry of three years and thereby the Court is barred from taking cognizance after the expiry of the period of limitation. Therefore, the final report cannot be sustained and it is liable to be quashed.

10. Accordingly, the proceedings in Crime No. 439 of 2016 is quashed as against the petitioner and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed. However, it is made clear that the Appropriate Election Officials are entitled to initiate proceedings in accordance with law to deal with the seizure of cash.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

To

1. The Sub-Inspector of Police,
Melur Police Station,
Melur, Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Election Officer,
Melur Legislative Assembly Constituency.
Melur, Madurai District.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-7835[F] dated 24/02/2020)

Crl.O.P. (MD) .No.3233 of 2020
24.02.2020

SDS (17.06.2020) 4P-5C