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9+BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.20521 of 2016
and
Crl.M.P.(MD).No.10441 of 2016

M.S.Selvaraj ... Petitioner / Sole Accused

Vs

1.The Inspector of Police,
Pavoorchatram Police Station,
Tirunelveli District.
(Crime No.448 of 2016) ... 1st Respondent / Complainant

2.Victor Dharmaraj,
Village Administrative officer,
Thippanampatti(Incharge)
Tenkasi Taluk,
Tirunelveli District. ... 2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to quash the F.I.R. in Crime No.448 of 2016 dated 13.10.2016 for the offences under Sections 447 and 188 of IPC on the file of the first respondent Police, as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For 1st Respondent : Ms.M.Anandhadevi
Government Advocate (Crl Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.448 of 2016 dated 13.10.2016 for the offences under Sections 447 and 188 of IPC on the file of the first respondent Police .

2.The case of the prosecution is that the petitioner's wife was running a brick kiln in Survey No.1103 and on the direction of the Pollution Control Board, the Thasildhar, Tenkasi sealed the Brick Kiln on 11.07.2016. on 12.10.2016, the petitioner along with his labourers entered into adjacent path way and attempted to

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dismantle the machineries. On the basis of the above said allegation, the first respondent police registered the complaint and filed a First Information Report against the petitioner for the offences under Sections 447 and 188 of IPC.

3.The learned counsel appearing for the petitioner submitted that the petitioner is an 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 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 restrained anybody. However, the officials of the respondent police had beaten the petitioner and others. When there was lot of members involved in the occurrence, the respondent police had registered this case, under Sections 447 and 188 of IPC as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4.Per contra, the learned Government Advocate(Crl.Side) appearing for the first respondent Police submitted that after sealing the brick kiln, the petitioners along with other accused persons have attempted to dismantle the machineries. Further, he submitted 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.Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and M/S.M.Anandhadevi, learned Government Advocate (Crl.Side) appearing for the first respondent.

6.On perusal of the charge, it is seen that after sealing the brick kiln, the petitioners along with other accused persons have attempted to dismantle the machineries. Therefore the respondent police levelled the charges under Sections 447 and 188 of IPC as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioner. 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,*

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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 447 and 188 of 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 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.In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 447 and 188 of 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 Sections 447 and 188 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

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9.Accordingly, the proceedings in Crime No. 448 of 2016, is quashed in so far as the petitioner is concerned and the Criminal Original Petition is allowed. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Inspector of Police,
Pavoorchatram Police Station,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Judicial Magistrate,
Tenkasi.

+1 CC to M/s.T. LAJAPTHI ROY, Advocate (SR-19493[F] dated 08/10/2020)

Crl.O.P.(MD).No.20521 of 2016
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