



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.22412 of 2016

and

Crl.M.P.(MD)Nos.11678 & 11679 of 2016

V.Rajasekaran

... Petitioner/Accused No.1

Vs.

1.The Sub Inspector of Police,
Town Police Station,
Sivagangai District.
(Cr.No.258/14)

... 1st Respondent/Complainant

2. Naganathan,

...2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in S.T.C.No.5835/2014 on the file of the Judicial Magistrate No.1, Sivagangai and quash the same as illegal as against the petitioner.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (crl.side) for R1

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.5835/2014 on the file of the Judicial Magistrate No.1, Sivagangai.

2. The case of the prosecution is that on 13.07.2017, the petitioner and 62 others were joined together and sat in either side of the road and caused hindrance to the public and agitated to take action as against persons offering money for vote, while prohibitory order was in force. On the basis of the above said allegations, the second respondent police registered the complaint in Crime No.258 of 2014 for the offences under Sections 143, 341 and 188 of IPC, as against the petitioner and filed the charge sheet against these petitioners for the offences under under Sections 143, 341 and 188 of IPC. and the same was taken cognizance by the Judicial Magistrate No.1, Sivagangai, in S.T.C.No.5835/2014. The said



criminal proceedings is under challenge in this Criminal Original Petition.

3. According to the petitioner, 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 the learned counsel for the petitioner would submit that the petitioners or any other members had never disturbed public, public tranquility and peace and there is no evidence that the petitioner caused damages to the public property. The petitioner unaware about the order of the Commissioner of Police regarding banning the demonstration. On precautionary measures, the second respondent police had registered this case, under under Sections 143, 341 and 188 of IPC, as against the petitioners. Therefore, he sought for quashing the proceeding.

4. The learned Government Advocate(Crl.Side) would submit that the petitioner and 62 others were joined together and sat in either side of the road and caused hindrance to the public and agitated to take action as against persons offering money for vote, while prohibitory order was in force and there are specific allegations as against the petitioner to proceed with the trial. 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 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. Perused the material documents available on record.

6. On perusal of the charge, it is seen that the and 62 others were joined together and sat in either side of the road and caused hindrance to the public and agitated to take action as against persons offering money for vote, while prohibitory order was in force. Therefore the respondent police levelled the charges under Sections 143, 341 and 188 of IPC, as against the petitioners. 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 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.

7. The only question for consideration is that whether the registration of case under Sections 143, 341 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 shall take cognizance-

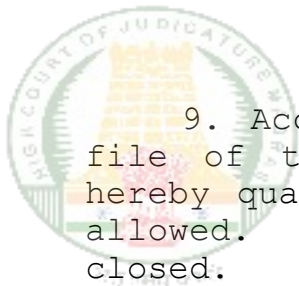
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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.

8. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143, 341 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 offence under Section 188 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.



9. Accordingly, the proceedings in S.T.C.No.5835/2014 on the file of the Judicial Magistrate No.1, Sivagangai District, is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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 Judicial Magistrate No.1,
Sivagangai.
- 2.The Sub Inspector of Police,
Town Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.O.P (MD) No.22412 of 2016
30.11.2020

VB (18.12.2020) 4P 4C