



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.22603 of 2016

and

Crl.M.P.(MD) No.11808 of 2016

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1. U.Manikandan
2. S.Thurai
3. Y.A.Bright

... Petitioners/Accused 1 to 3

Vs.

- 1.The Inspector of Police, Police Station,
Kanyakumari Police Station,
Kanniyakumari District
(Crime No.520 of 2016)

- 2.Arumuga Tharan,
Manager, Arulmigu Bagavathi Amman Thirukovil,
Kanyakumari District.

... Respondents/Complainant/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No.520 of 2016 dated 02.11.2016 on the file of the Respondent No.1 and Quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy

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

: Mr.M.Saravanan for R2

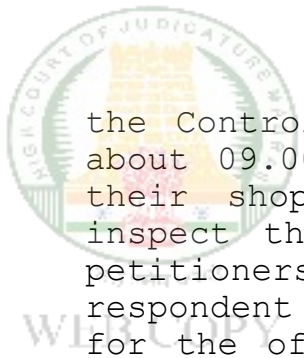
O R D E R

This petition has been filed to quash the First Information Report in Crime No.520 of 2016, dated 02.11.2016, on the file of the first respondent police.

2.Heard the learned counsel for the petitioners, the learned counsel for the second respondent and the learned Government Advocate (Crl.Side) for the respondent police.

3.The learned Government Advocate(Crl.Side) would submit that no case is pending as against the petitioner as on date.

4. The case of the prosecution is that the defacto complainant, who is the Manager of the Arulmigu Bagavathi Amman Thirukovil, gave a complaint before the first respondent police by alleging that there are totally 38 shops belonging to the Temple, which are under



the Control of the H.R & CE Department and that on 01.11.2016 at about 09.00 am., the petitioners' tried to lay asbestos sheets to their shops and also requested the first respondent police to inspect the place and to remove the asbestos sheet laid by the petitioners. On the basis of the above said allegations, the respondent police registered the complaint in Crime No. 520 of 2016 for the offences under Sections 188 and 294(b) of IPC. The said criminal proceedings is under challenge in this Criminal Original Petition.

5. According to the petitioners, the petitioners are innocents and they have not committed any offence as alleged by the prosecution and due to personal motive, the defacto complainant lodged the complaint as against the petitioners. 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 petitioners or any other members had never disturbed public, public tranquility and peace and there is no evidence that the petitioners caused damages to the public property. The petitioners unaware about the order of the Commissioner of Police regarding banning the demonstration. On precautionary measures, the respondent police had registered this case, under Sections 188 and 294(b) of IPC as against the petitioners. Therefore, they sought for quashing the proceeding.

6. The learned Government Advocate(Crl.Side) submitted that the petitioners' were tried to lay asbestos sheets to their shops and there are specific allegations as against the petitioners to proceed with the investigation. 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.

7. Perused the material documents available on record.

8. On perusal of the charge, it is seen that the petitioners have attempted to lay asbestos sheets to their shops without any permission. Therefore the first respondent police levelled the charges under Sections 188 and 294 (b) of I.P.C. 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*



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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.

9. The only question for consideration is that whether the registration of case under Sections 188 and 294(b) 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-

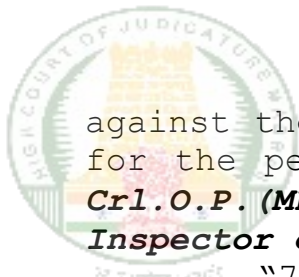
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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.

10. The ingredients of the offence under Section 294(b) of I.P.C. are not made out as against the petitioners. The charge does not show the obscene words, which were uttered by the accused and no one even whisper about the filthy words uttered by the accused as against the defacto complainant/ second respondent. Therefore, the offence under Section 294(b) of I.P.C. is not at all made out as



against the petitioners herein. In this regard, the learned counsel for the petitioner also relied upon the judgment of this Court in **Crl.O.P. (MD) No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)**, which reads as follows:-

"7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(B) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings."

The above judgments are squarely applicable in the case on hand. In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 188 and 294(b) 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. Therefore, the FIR in Crime No.520 of 2016 cannot be sustained and it is liable to be quashed.

11. Accordingly, the F.I.R. in Crime No.520 of 2016, on the file of the first respondent police is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

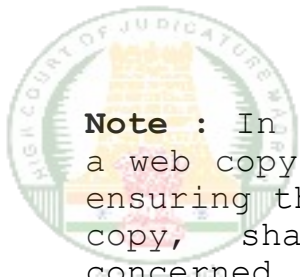
Assistant Registrar (CS-I)

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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.

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To

1.The Inspector of Police,Police Station,
Kanyakumari Police Station,
Kanniyakumari District.

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

+1 CC to M/s.M.SARAVANAN, Advocate (SR-23385[F] dated 01/12/2020)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-23443[F] dated
01/12/2020)

Order made in
CRL.O.P (MD) No.22603 of 2016
30.11.2020

SS (CO)

AP(17/12/2020) 5P 5C