

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.2716 of 2021
and
CRL.M.P.Nos.1497 and 1498 of 2021

K.P.P.Baskar ...Petitioner/Accused

Vs.

1.The State represented by
The Inspector of Police,
Namakkal Police Station,
Namakkal District.
Crime No.340 of 2016. ...Respondent/Complainant

2.R.Suresh ...Respondent/De-facto
complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to call for the records and quash the charge sheet filed by the first respondent against the petitioner in S.T.C.No.265 of 2016 on the file of the Judicial Magistrate Court No.1, Namakkal.

For Petitioner : Mr.D.Vairamoorthy

For R1 : Mrs.Kritika Kamal
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the final report filed in Crime No.265 of 2016 on the file of the Judicial Magistrate Court No.1, Namakkal under Sections 171 (F), 188 IPC r/w 177 of the Motor Vehicles Act.

2. The brief facts leading to the filing of the charge sheet, are as follows:-

On 14.05.2016 at about 05.00 p.m., the accused and others violated the election code by using excessive vehicles with their political flags and caused disturbance to the public. Hence, the accused committed the offence under Sections 171(F), 188 IPC r/w Section 171 of the Motor Vehicles Act. Three witnesses, who are the Government Officials, were examined, no public or private individuals were examined as witness.

3. The learned counsel appearing on behalf of the petitioner would submit that for the offence under Section 188 IPC, the Magistrate cannot take cognizance, except by following the procedure as provided under the Code. Similarly, the offence under Sections 171(F) IPC and 177 of the Motor Vehicles Act are non-cognizable offence. Without getting permission from the Magistrate, the Investigating Officer ought not to have proceeded with the investigation and completed the same and filed the charge sheet. Hence, there is a violation of the procedural law. Even the entire statement recorded by the prosecution does not constitute any offence. Hence, he submitted that the charge sheet is nothing but an abuse of process of law and prayed for quashing the charge sheet.

4. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that though the offence under Section 188 IPC was charge sheeted without following the procedure, the prosecution can be maintained in respect of the other offence namely, Section 171 (F) IPC and Section 177 of the Motor Vehicles Act. Hence, prayed for dismissal of this petition.

5. I have heard the learned counsel appearing on either side and perused the entire materials.

6. As indicated above, the final report has been filed for the offences punishable under Sections 171(F) and 188 IPC r/w 177 of the Motor Vehicles Act. As per Section 195 of the Criminal Procedure Code, no court shall take cognizance of any offence punishable under Sections 172 to 188 IPC, except on a complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Section 195 of the Criminal Procedure Code makes it very clear that except on a complaint of a public servant concerned, the Court cannot take cognizance for the offences under Sections 172 to 188 IPC.

7. Admittedly, in this case, the prosecution has filed the charge sheet for the offence under Section 188 IPC and the trial Court also said to have taken cognizance. The complaint was not made by the public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, when the law itself prohibits taking cognizance of such offence, any final report filed without following such procedure becomes void ab initio. This aspect was elaborately dealt by this Court in the case of Jeevanandham and others vs. State rep by the Inspector of Police, and another [2018-2-L.W. (Crl.) 606]. Therefore, this Court is of the view that the charge under Section 188 IPC has to be quashed for the violation of Section 195 of the Criminal Procedure Code.

8. As far as Section 171(F) IPC is concerned, this

offence is only non-cognizable offence as per the schedule of the Code. Such being the position, the Investigating Officer could have conducted the investigation only after getting permission from the Magistrate under Section 155 of the Criminal Procedure Code. In this case, it has not been done. Therefore, FIR and the further investigation without the permission of the Magistrate is not according to law. Therefore, the same is also liable to be quashed.

9. Similarly, the offence under Section 177 of the Motor Vehicles Act also punishable with the fine of less than Rs.500 and it may be extended to Rs.1,000/-. This is also non-cognizable offence. Such view of the matter, without getting permission under Section 155 Cr.P.C., investigation cannot be made. Further, the entire materials collected and the statement recorded from three of the official witnesses also indicate that even entire statements are taken as proved, even then, the offence would not be proved. Therefore, continuing the proceedings will amount to abuse of process of law and infringe the right of the persons.

10. Accordingly, this Criminal Original Petition is allowed and the final report filed against the petitioner is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

The Inspector of Police,
Namakkal Police Station,
Namakkal District.
Crime No.340 of 2016.

+1cc to Mr.S.Senthil, Advocate SR.No.8755

+1cc to Government Pleader SR.No.8973

Judgment made in
CRL.O.P.No.2716 of 2021

GPL(CO)
GMY(22/06/2021)