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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.1318 of 2018  
and  
Crl.M.P.Nos.481 and 482 of 2018

Jaganathan

...Petitioner/Accused

Vs.

State by Inspector of Police,  
D1, Thiruttani Police Station,  
Thiruvallur District.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.27 of 2016 on the file of the Judicial Magistrate, Thiruttani, Thiruvallur District and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.Shanmuga Rajeswaran, GA (Crl. Side)

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ORDER

It is the case of the prosecution that on 05.04.2014 around 11.00 p.m. when Mr.K.V.Vanamalitharan, who was appointed as Magistrate of the Flying Squads Team during the general election to the Lok Sabha in 2014 for Thiruttani Constituency was patrolling the area within his jurisdiction to ensure compliance with the model code of conduct and maintenance of law and order situation. At that time, the Ashok Leyland Mini Van bearing Registration No.TN-20-CC-3719 was moving from Thiruttani towards R.K.Pattai and the Flying Squad Team stopped the vehicle and conducted a vehicle check. On searching the petitioner's vehicle, it was found carrying A4 notice papers for the elections campaigning along with Toor Dal (50 kg) and Urad Dal (50 kg). The Flying Squad Team headed by Mr.K.V.Vanamalitharan requested the petitioner to produce the documents and the same was not produced by the petitioner. Based on the above said incident, an FIR was registered against the petitioner/accused for the offences under Section 171(h), 188 of IPC r/w Sec. 127(a) of the Representation of Peoples Act. Based on the complaint given by Mr.K.V.Vanamalitharan, Flying Squads Team, the respondent



police filed a final report. Hence, the petitioner has come forward before this Court to quash the complaint in S.T.C.No.27 of 2016 on the file of the Judicial Magistrate Court, Thiruttani.

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2. Learned counsel appearing for the petitioner submits that the provision prescribed u/s 195 Cr.P.C. Clearly prescribes that where an offence is alleged to be committed u/s 188 IPC, it is obligatory on the part of the complainant to make a complaint before the Magistrate and it is not within the jurisdiction of the police authorities to register the complaint and, therefore, non-following of the said provision vitiates the prosecution and, therefore, the aforesaid complaint deserves to be quashed.

3. On the above contentions, this Court heard the learned Government Advocate (Crl. Side) appearing for the respondent who submitted that based on the complaint the law enforcing agency has registered the complaint and it is based on the complaint of the Flying Squad Team in the course of election patrol and, therefore, the police are well within their power to register the complaint.

4. This Court paid its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

5. The sum and substance of the case of the petitioner is that for invoking the provision u/s 195 Cr.P.C., insofar as an offence alleged to be committed u/s 188 IPC, it is mandatory that the complaint ought to be filed before the jurisdictional Magistrate either orally or in writing and it is not within the domain of the police to register a case for the same offence. In a nutshell, it is the case of the petitioner that the compliance of the provisions u/s 195 Cr.P.C. is mandatory and not obligatory.

6. In Jeevanandam - Vs - State (2018 (2) LW (Crl.) 606) learned single Judge of this Court, vide order dated 20.09.2018, after exhaustively dealing with the provisions u/s 195 Cr.P.C. and Section 188 IPC and whether the said provisions of law are mandatory or obligatory, held as under :-

"15. From the above judgments, it is clear that in order to prosecute an accused for an offence punishable under Section 188 of IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code, else, such action is rendered void ab initio. The object of the provision is to provide for a particular procedure, which gives authority only to the public servant. The legislative intent is to prevent an individual or a group of persons from facing



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criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will, or frivolity of disposition and to save the time of Criminal Courts from being vexed by endless prosecution. Section 195 of Cr.P.C is an expansion to the general rule contained under Section 190 of Cr.P.C, wherein, any person can set the law in motion by making a complaint.

16. Therefore, it is very clear from the above judgments that there must be a complaint by a public servant, who is lawfully empowered, whose lawful order has not been complied with. The provisions of Section 195 of Cr.P.C are mandatory and non-compliance, with it, will make the entire process void ab initio, being without jurisdiction.

17. The submission of the learned Additional Public Prosecutor to the effect that Section 188 of IPC is a cognizable offence, and therefore, the Police Officer is entitled to proceed under Section 154, 156 and 157 of Cr.P.C, is not sustainable. The offence being cognizable by itself, does not enable the Police Officer to register an FIR for an offence under Section 188 of IPC. The reason being, such registration of an FIR has to necessarily end with a Police Report under Section 173(2) of Cr.P.C, which is specifically barred under Section 195 of Cr.P.C. The definition of a complaint under Section 2(d) of Cr.P.C itself makes it clear that a complaint does not include a Police Report. The Hon'ble Supreme Court has gone to the extent of saying that such a Final Report, which is taken cognizance will make the entire proceedings void ab initio which would necessarily mean that the registration of the FIR for an offence under Section 188 of IPC will also become void.

18. There is one more analogy, which can be used here. Section 195(1)(b) of Cr.P.C prohibits any complaint for an offence that is committed during Court proceedings. Such offence committed during Court proceedings like forgery, impersonation, perjury etc., by itself may be cognizable in nature, but that does not empower the Police Officer to register an FIR and complaint in such cases



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can be given only by the Court concerned. Therefore, the nature of the offence does not give a right to the Police Officer to register an FIR and investigate and file a Final Report, when those offences fall within the category enumerated under Section 195 of Cr.P.C. Therefore, the arguments of the learned Additional Public Prosecutor in this regard is not sustainable.

19.The next argument of the learned Additional Public Prosecutor to the effect that since a Police Officer is also a public servant under Section 21 of IPC, his Final Report filed before the Court under Section 173(2) of Cr.P.C must be construed as a complaint under Section 195(1)(a)(i), is also not sustainable. The word used under Section 188 of IPC is "public servant lawfully empowered" and the word used in Section 195(1)(a)(i) is "public servant concerned". The very terminology that has been used in the provision makes it clear that not all public servants falling under Section 21 of IPC can give a complaint in writing, it is only the public servant who has been specifically authorised, by a specific order in this regard, who can file a written complaint before the concerned Judicial Magistrate Court.

20.It is true that a Police Officer by virtue of the power given under Section 41 of Cr.P.C., will have the authority to arrest a person, without any warrant or order from a Magistrate, when a cognizable offence is committed in his presence or in order to prevent the committing of a cognizable offence. This power by itself will not vest the Police Officer to register an FIR for an offence under Section 188 of IPC. After the arrest, the concerned Police Officer is duty bound to inform the public servant authorised about the offence committed under Section 188 of IPC and the public servant thereafter, has to proceed in accordance with the procedure under Section 195(1)(a)(i) of Cr.P.C. In other words, the power of the Police Officer to arrest a person committing a cognizable offence, is only a preventive action and thereafter the procedure to be followed is guided by Section 195(1)(a)(i) of Cr.P.C.



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21. The last submission made by the learned Additional Public Prosecutor to the effect that, where other offences are also committed along with the offence under Section 188 of IPC, the authority of the Police Officer to register an FIR and to investigate and file a Final Report for the other offences, is in no way affected, is perfectly correct. The judgments cited by the learned Additional Public Prosecutor in this regard, supports the submission made by the learned Additional Public Prosecutor and this Court is in agreement with the said submission.

22. In some of the cases, it is also seen that the same Officer has registered the FIR, conducted the investigation and also filed the Final Report. Such a procedure goes against the very fundamental principle of fair investigation, wherein, the informant and the investigator must not be the same person. Such a procedure, in fact is violative of Article 21 of the Constitution."

7. The facts in the present case are squarely covered by the decision of this Court in Jeevanandam's case (supra). As stated therein, the complaint laid by the Flying Squad before the police had been taken on file by the respondent leading to the filing of the charge sheet, which is not the intent and purport of the provision u/s 195 Cr.P.C. The above decision is squarely applicable to the case on hand and this Court is of the considered view that the present petition deserves to be allowed.

8. For the reasons aforesaid, following the decision in Jeevanandam's case (supra), this criminal original petition is allowed and S.T.C.No.27 of 2016 on the file of the Judicial Magistrate, Thiruttani, Thiruvallur District is accordingly quashed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msm/GLN



To

1. The Judicial Magistrate  
Tiruttani, Tiruvallur District.

2. The Inspector of Police,  
D1, Thiruttani Police Station,  
Thiruvallur District

3. The Public Prosecutor,  
High Court of Madras,  
Madras.

+1CC to Mr.R.Vivekananthan, Advocate, Sr.No.22646

Cr1.O.P.No.1318 of 2018

PCH (CO)

K.RK. (23.07.2021)