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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.06.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.2614 OF 2018

1. Manish Choudhary

2. Mansukj Guriar

.. Petitioners

- Vs -

The Station House Officer
Reddiarpalayam Police Station
Pondicherry.

.. Respondent

Petition filed u/s 482 Cr.P.C. seeking to call for the records relating to the impugned FIR No.59 of 2017 pending investigation on the file of the respondent police and quash the same as highly illegal and abuse of process of law.

For Petitioners : Mr. J.Zeakumar

For Respondent : Mr.D.Bharatha Chakravarthy,APP (Pondy)

ORDER

This petition has been filed by the petitioners for quashment of the impugned FIR No.59/2017 pending investigation on the file of the respondent.

2. The crux of the allegation as is reflected in FIR is that based on the complaint given by the Deputy Director, JIPMER Hospital, Pondicherry, relating to malpractice in the staff nurse examination, in which the petitioners have uploaded the question paper and answer paper in the social media by capturing the same in their cellphone, which was not permitted to be carried inside the examination hall, the case has been registered in FIR No.59/17 for the offence u/s 188 r/w 34 IPC and investigation has been taken by the respondent.



3. Learned counsel appearing for the petitioners submit that the respondent has charged the petitioners u/s 188 r/w 34 IPC and to invoke the provision u/s 188 IPC, filing of a private complaint before the Court, as is contemplated u/s 195 Cr.P.C., is mandatory and in the absence of such a private complaint being filed, no court could take cognizance of the offence u/s 188 Cr.P.C. and, therefore, the offence u/s 188 IPC definitely has to be set aside.

4. Per contra, learned Public Prosecutor, appearing on behalf of the respondent submits that the complaint had emanated from the Deputy Director, JIPMER to the Director General of Police, which was in turn forwarded to the respondent based on which the FIR has been registered. Further, it is submitted that the gravity of the offence was of such a nature that the complaint has been registered and the second limb of Section 195 (1) (a) (i) Cr.P.C. squarely saves the respondent and there is no illegality on the part of the respondent in registering the complaint. It is further submitted by the learned Addl. Public Prosecutor that the technical objection raised by the petitioners is only to wriggle out of the position in which they have placed themselves and, therefore, this Court may not entertain the contention advanced on behalf of the petitioners.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

6. The fact as to the complaint given by the Deputy Director, JIPMER to the Director General of Police, which has, in turn been sent to the respondent based on which the FIR has been registered are not in dispute. The pivotal contention of the petitioners is that for registering a case u/s 188 IPC, the mandatory requirement, as contemplated u/s 195 Cr.P.C. has not been adhered to, which renders the FIR unsustainable.

7. To appreciate the said contention, it is but necessary to have a cursory look at Section 195 Cr.P.C., which is quoted hereunder for better clarity :-

"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 court 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,



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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;

* * * * *

8. From the above provision of law, it is implicitly clear that the complaint should emanate from a public servant to the Court upon which the Court can take cognizance of such a complaint for registration of the offence u/s 188 IPC.

9. In the present case, it is the admitted case of the respondent and also borne out by record viz., the FIR that the complaint given by the Deputy Director, JIPMER to the Director General of Police had formed the basis for registration of a case u/s 188 IPC. No private complaint has been filed before the Court upon which the Court had taken cognizance of the same to register the case. Such being the case, the registration of FIR by the respondent on the basis of the complaint by the Deputy Director, JIPMER, cannot be said to be a complaint as is envisaged u/s 195 Cr.P.C. Therefore, the registration of the case by the respondent against the petitioners u/s 188 IPC cannot be sustained for non-compliance of the mandatory provision envisaged u/s 195 Cr.P.C.

10. For the reasons aforesaid, the registration of FIR for the offence u/s 188 r/w 34 IPC are wholly unsustainable and does not stand the test of legal scrutiny and in the above backdrop, this Court has to necessarily quash FIR No.59/2017 pending investigation on the file of the respondent police.

11. Accordingly, this criminal original petition is allowed quashing FIR No.59/2017 pending investigation on the file of the respondent.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

SMN/GLN

To

1. The Public Prosecutor (Pondy)
High Court, Madras.



2. The Station House Officer
Reddiarpalayam Police Station
Pondicherry.

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PCH (CO)
SU (26/07/2021)