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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.21377 OF 2021

AND

CRL.M.P.NO.11564 OF 2021

A.G.Venkatachalam

...Petitioner

Versus

1. The State represented by  
The Inspector of Police  
Anthiyur Police Station  
Crime No.190 of 2016  
Erode District.

2. P.Arul Mani

...Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records culminating in the STC.No.306 of 2021, pending on the file of the Judicial Magistrate No.I, Erode, quash the same.

For Petitioner : Mr.B.M.Subash

For Respondents : Mr.Hasan Mohamed Jinnah  
State Public Prosecutor  
assisted by  
Mr.A.Damodaran for R1  
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records culminating in the STC.No.306 of 2021, pending on the file of the Judicial Magistrate No.I, Erode, quash the same.

2. The case of the prosecution is that on 24.06.2017, the petitioner, who is a member of a political party, along with several members gathered at Anthiyur Bus Stand and burned the



effigy of a political leader. Hence, a case was registered for the offences under Sections 143, 188 and 285 of IPC and the same was taken on file before the Judicial Magistrate No.I, Erode in STC.No.306 of 2021.

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3. The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court of India held that the right to freely assemble and also right to freely express once view are constitutionally protected rights, under Part III and their enjoyment can be restricted only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of, freedom of speech and assemble that are so essential to a democracy. 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 a written order from the authority. Further he submitted that the petitioner or any other members, never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. However, the officials of the respondent police beaten the petitioner and others. When there was lot of members involved in the protest, the respondent police had registered the case, as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioner along with others assembled in large numbers, 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. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. On perusal of the charge, it is seen that the petitioner along with other accused without getting prior permission from the concerned authority, the petitioner along with several members assembled and burned the effigy of a political leader. Therefore, the respondent police levelled the charges under Sections 143, 188 and 285 of IPC as against the petitioner. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the



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charges against the petitioner. 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 trends 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, 188 and 285 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. The learned counsel for the petitioner relied upon a judgment in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994(1) Crimes, Page 477. He also relied upon a judgment in a batch of quash petitions, reported in 2018-2-L.W. (Cr1.) 606 in Cr1.O.P. (MD)No. 1356 of 2018, dated 20.09.2018 in the case of Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District, and this Court held in Paragraph-25, as follows :-

"25.In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his





Therefore, the final report cannot be sustained and it is liable to be quashed.

10. Accordingly, the proceedings in STC.No.306 of 2021 on the file of the Judicial Magistrate, No.I, Erode, is quashed as against the petitioner and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1. The Judicial Magistrate No.I,  
Erode.
2. The Inspector of Police  
Anthiyur Police Station  
Crime No.190 of 2016  
Erode District.
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.B.Mohan, Advocate, S.R.No.58470

CRL.O.P.No.21377 of 2021  
and  
Crl.M.P.No.11564 of 2021

NK(CO)  
PM/30/11/2021