



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P. (MD) No.14345 of 2021

and

Crl.M.P. (MD) No.7510 of 2021

WEB COPY

Abdul Wahab

... Petitioner/Accused No. 1

Versus

1. The State rep. by

The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
Tirunelveli.
(crime No.286 of 2017)

...1st Respondent/Complainant

2. Udhayasuriyan,

The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli.

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned FIR in Crime No.286 of 2017 on the file of the Tirunelveli Junction police Station, Tirunelveli City, Tirunelveli District and quash the same.

For Petitioner	:	Mr. Ramsundarvijayraj Fro M/s.Veera Associates
For Respondents	:	Mr. Hasan Mohamed Jinnah, State Public Prosecutor, Assisted by A.Damodharan, Additional Public Prosecutor, for R1

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.286 of 2017 on the file of the Tirunelveli Junction Police Station, Tirunelveli City, Tirunelveli District and quash the same.

2. The case of the prosecution is that on 25.04.2017, at about 10.30 a.m., during the time of patrol at the Junction, the petitioner, who is District Secretary of the DMK party, along with 372 persons, including 11 women, conducted protest against the Central Government in support of the agriculture and farmers, without getting prior permission from the concerned authority. They



were obstructing the free flow of people in that area. In order to ensure, free movement of people, they were arrested and a case was registered by the respondent police in Crime No.286 of 2017 for the offences under Sections 341, 143 and 188 IPC.

3. The learned counsel appearing for the petitioner submitted that the petitioner and the other accused are falsely implicated in this case for political reason as a political vendetta. In order to draw the attention of the Central Government, the petitioner along with several others had protested in support of the farmers. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to assemble and to freely express one's view is a constitutionally protected right under Part III. He further submitted that it is the duty of the Government to protect the right of freedom of speech and assemble which is essential character of 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 written order from the authority. Further submitted that the petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. When there several members participated in the protest, the respondent police registered this case, under Section 341, 143 and 188 of IPC as against the petitioner and few others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned State Public Prosecutor submitted that the petitioner along with others staged protest and there are specific allegations as against the petitioner 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.

5. Heard the learned counsel for the petitioner and learned State Public Prosecutor appearing for the respondent.

6. On perusal of the charge, it is seen that the petitioner and others staged protest in support of the agriculturists, without prior permission from the concerned authority, and were trying to obstruct the free flow of people. Therefore the respondent police levelled the charges under Sections 341, 143 and 188 of I.P.C. as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the 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:

<https://hcservices.ecourts.gov.in/hcservices> 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 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.

7. The only question for consideration is that whether the registration of case under Sections 143, 188 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 judgement in a batch of quash petitions, reported in **2018-2-L.W. (Cr1.) 606** in **Crl.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

<https://hcservices.ecourts.gov.in/hcservices/>



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 possession and under his management, has disobeyed;

and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e) The promulgation issued under Section 30 (2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to

trifle any democratic dissent of the citizens by



the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 341, 143 and 188 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. Further, the complaint does not even state as to how the protest formed by the petitioners and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. The occurrence is said to have taken place in public place in public view, Strangely, no public gave any complaint, examined as witness in this case. Therefore, the final report cannot be sustained and it is liable to be quashed.

10. Accordingly, the First Information Report in Crime No.286 of 2017 on the file of the first respondent police, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)



To

1. The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
Tirunelveli.

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

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-31686[F] dated
08/10/2021)

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TP (CO)
KB (30.11.2021) 6P 4C