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CRL.O.P.(MD)NO. 18456 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P.(MD)No. 18456 of 2021 and

CRL.M.P.(MD)No.10174 of 2021

K.P.Prabhu

... Petitioner / Sole Accused

Vs.

1. The State rep. By,
The Inspector of Police,
B6, Jaihindpuram police station,
Madurai City.
(Crime No.616 of 2016)

... Respondent / Complainant

2. Martin Selvaraj,
Sub Inspector of Police,
Jaihindpuram police station,
Madurai City.

... Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for records relating to S.T.C.No.1917 of 2019 on the file of the learned Judicial Magistrate No.IV, Madurai and quash the same as against the petitioner.

For Petitioner : Mr.M.Karunanithi
For R-1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

2. The petitioner is figuring as accused in S.T.C.No.1917 of 2019 on the file of the learned Judicial Magistrate No.IV, Madurai.

3. The case of the prosecution is that on 30.05.2016 at about 10.30 a.m., the petitioner along with others were conducting a road roko and raising slogans against the local body. According to the prosecution, such a road roko was held without obtaining any prior permission. That led to registration of Crime No.616 of 2016. Investigation was conducted and final report was filed before the Judicial Magistrate No.IV, Madurai and cognizance of the offences under Sections 341 and 188 of I.P.C. was taken.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called

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for quashing the impugned prosecution.

5. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that no case for interference has been made out.

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6. I carefully considered the rival contentions and went through the materials on record.

7. As rightly pointed out by the learned counsel appearing for the petitioner, the case on hand is squarely covered by the Order dated 20.09.2018 made in Crl.O.P.(MD) No.1356 of 2018 etc. The learned Judge in the said decision has held 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 possession and under his management, has disobeyed; and

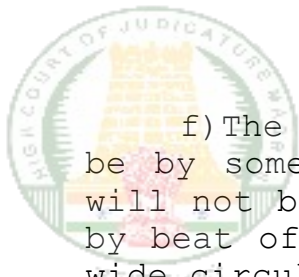
iv) that such disobedience causes or tends to cause;

(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.

This Court will now proceed to deal with the independent cases."

8. In the case on hand, no adverse consequences had really ensured. On this ground, a number of cases registered under Section 188 of I.P.C. have been quashed by this Court. One can take judicial notice of the fact that during the relevant time, Madurai City faced water scarcity and shortage. Therefore, it is quite natural for the persons of the locality to gather together and resort to such road roko agitations. In a democratic society, holding of such protests can very well be understood. Such protests cannot be met with prosecutions. Therefore, continuance of the impugned prosecution would only amount to a clear abuse of legal process. The impugned proceedings are quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The Judicial Magistrate No.IV,
Madurai.

2. The Inspector of Police,
B6, Jaihindpuram police station,
Madurai City.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M. KARTHIKEYAVENKITACHALAPATHY, Advocate (SR-35764[F]
dated 24/11/2021)

Cr1.O.P.(MD)No.18456 of 2021
24.11.2021

PMU (CO)

KB(13.12.2021) 4P 5C