



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.03.2021

Delivered On : 08.04.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.17035 of 2017

and

Crl.M.P.(MD)No.11204 of 2017 & 11205 of 2017

N.Maniraj

... Petitioner/A2

Vs.

1.The Inspector of Police

Karur Town Police Station,

Karur, (Crime No.396/2013)

...1st Respondent/Complainant

2.P.Vadivel

...2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in C.C.No. 251 of 2016 on the file of the Judicial Magistrate No.1 Karur and quash the same in so far as this petitioner is concerned.

For Petitioner

: Mr.M.Bindran

For Respondent 1

: Mr.M.Ganesan

Government Advocate (crl.side)

ORDER

This petition has been filed seeking for quashment of the charge sheet in C.C.No.251 of 2016 on the file of the Judicial Magistrate No.1 Karur.

2.The case of the first respondent before the trial Court is that the petitioner herein is arrayed as accused No.2 before the trial Court. On 19.04.2013, at about 10.00 p.m, the third accused in the case obtained police permission to conduct a public meeting near Ulavar Santhai, Karur. But, against the order passed under Section 30(2) of Police Act, all the three accused persons continued the public meeting beyond the prescribed time and in that meeting, they indulged in criminally intimidating a particular person and also incited violence between two groups. Based upon the complaint given by the Sub Inspector of Police attached to Karur Town Police Station, a case in Crime No.396 of 2013, under sections 188, 153 and 506(i) I.P.C. was registered against three accused persons, on 16.05.2013 and the investigating officer took up investigation, recorded the statement of witnesses, collecting materials and filed the final report, as against three persons as stated above. Seeking quashment of the final report, the second accused before the trial Court has filed this Criminal Original Petition.



4.The fact that this petitioner along with two other co-accused participated in a public meeting that was conducted on 19.04.2013, at about 10.00 p.m., near Ulavar Santhai, Karur Town, is not disputed. It is also not disputed that permission for conducting meeting obtained. Now, according to the first respondent, the meeting continued beyond the prescribed time. Even though it is stated a promulgation was effected by the Deputy Superintendent of Police, Karur, no material has been placed by the police to show that a promulgation order under Section 30(2) of Police Act was issued during the relevant time. Even in the Annexure, the investigating officer has not enclosed the copy of such promulgation order. To attract an offence under Section 188 I.P.C. one of the conditions to be satisfied is that there must be a valid promulgation under Section 30(2) of Police Act, 1861. The valid promulgation has also been clarified to the effect that the same must be done openly and in public and any private information cannot be considered to be a promulgation. The order must be notified by any Gazette or published in a newspaper with a wide circulation. So, none of these ingredients have been satisfied in this case. As I mentioned earlier, the investigating officer has not collected any material to show that a promulgation under Section 30(2) of Police Act, 1861 was in force during the time. So, in the absence of any such material, the condition on the part of the first respondent that the petitioner along with two other accused persons continued the public meeting against the proclamation is without any basis and material.

5.The second accusation is that they committed an offence under Section 188 I.P.C., whether the police investigation is permissible under Section 188 I.P.C. is no more *res integra* and also there is a bar under Section 195(1)(a) (i) of Criminal Procedure Code against taking cognizance of such offence by the Magistrate without a formal written complaint from the competent public authority. But, it is also a settled law that when there is combination of cognizance or non cognizance offences, police can register the case and investigate the non cognizable offence also and file a final report. This is also a settled position of law. Here, according to the first respondent the petitioner and along with two others have committed offence punishable under sections 153 and 506(i) I.P.C. also. So, the police is empowered to conduct investigation in respect of Section 188 I.P.C. also. But, in the absence of proclamation under Section 30(2) of Police Act, 1861, the offence under Section 188 I.P.C will not be attract against this petitioner and two other co-accused. The ingredients of Section 188 I.P.C. has been elaborately set out in a judgment reported in [2018 (2) L.W. (Criminal) 606] (Jeevanantham and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station) and guidelines were also issued by this Court in the said judgment, the guidelines are extracted here under:-



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.

6.So, in the light of the above said guidelines, if we test... the present final report, it does not satisfy the requirement of Section 188 I.P.C., and no basic ingredients of the offence are available against this petitioner and as well as the other accused.

7.The next offence as alleged against the petitioner is that under Section 153 I.P.C. Section 153 I.P.C. deals about wantonly giving provocation with intention to cause riot. The main ingredients of the offence is that there must be an intention on the part of the accused to provoke others to indulge in rioting. Reading of the statement of the witnesses, shows that the petitioner and others appears to have criticized and abused the sitting Transport Corporation Minister, by name, Senthil Balaji. But, the statement does not indicate any thing like that. The provocation to indulge in rioting and such an ingredients are completely absent. Even though the speech made by the petitioner and others appears to be abusar, it is for the concerned person to make a complaint. But, the Special Sub Inspector of Police is not competent to make such a complaint. So, the offence under Section 153 I.P.C. is not attracted, since the ingredients are completely absent.

8.The next offence is under Section 506(i) I.P.C. The person, who was criminally intimidated, has not lodged the complaint. Reading of the alleged statement shows that they have not criminally intimidated the then Transport Minister and mere the abuse or outburst will not make an offence under section 506 (i) I.P.C. A text of speech of every participants in the meeting has not been extracted either in the complaint or taken down by short hand stenographer of the Police Department and annexed along with the complaint. Since in the absence of any such written text of the speech, it may not be proper on the part of the Court to find that the offence under Section 506 (i) is also attracted. The reading of the entire statement as well as the final report shows that the first respondent appears to have acted for a ruling party. In my considered view, the final report of the first respondent is liable to be quashed as none of the ingredients are attracted.



9. So, in the result, this **Criminal Original Petition is allowed**. Even though only the second accused has filed this petition, the narration and as well as the discussion of finding, none of the offences are attracted only against this petitioner but also against other accused before the trial Court and nothing will survive, in the light of the above discussion other accused persons also. So, the entire final report filed against the accused in C.C.No. 251 of 2016 on the file of the Judicial Magistrate No.1 Karur, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.1
Karur.
- 2.The Inspector of Police
Karur Town Police Station,
Karur,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.17035 of 2017
08.04.2021

NA (CO)
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