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Crl.O.P No.4936 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.4936 of 2021

and

Crl.M.P No.3147 of 2021

1.Marsook Ahamed
2.Ahamed Batcha
3.Deen Mohamed
4.Jehaber Ali @ Jagabar Ali
5.Basheer Ahamed @ Mohamed Naser ... Petitioners

Vs.

State, rep. By its
The Special Sub Inspector of Police
Muthupettai Police Station
Tiruvarur
(Crime No.1672/2020) ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the records relating to the case in Cr.No.1672 of 2020 on
the file of the respondent herein and quash the same as illegal.

For Petitioner : Mr.I.Abdul Basith

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

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This Criminal Original Petition has been filed seeking to call for the records relating to the case in Cr.No.1672 of 2020 on the file of the respondent herein and to quash the same as illegal.

2. The petitioners are the accused 1 to 5 in the case in Crime No.1672 of 2020. The case has been registered by the respondent against the petitioners on the allegation that these petitioners had illegally assembled and protested in the public road without any prior permission against the alleged human rights violation occurred in the State of Uttar Pradesh and New Delhi. Subsequently, FIR has been registered in Crime No.1672 of 2020 on 13.06.2020 for the offences under Sections 143, 341, 188, 270 and 336 of IPC and Section 3 of Epidemic Disease Act, 1897 and Section 51(b) Disaster Management Act 2005.

3. The learned counsel for the petitioners submitted that the respondent has filed multiple FIR's for one offence in the course of same transaction, on the same set of facts. The role of the petitioners was not



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mentioned in the FIR and there is no ingredients to show that the petitioners have committed the offences under Sections 143, 341, 188, 270 and 336 of IPC and Section 3 of Epidemic Disease Act, 1897 and Section 51(b) Disaster Management Act 2005. The registration of the FIR is in violation of Section 195(1)(a)(i) of Cr.P.C and Section 60 of the Disaster Management Act, 2005. The allegations made in the FIR does not disclose any cognizable offence. There is no allegation that the accused were affected by Corona Virus and hence, their assembly had endangered to human life and safety. The right of the petitioners to assemble peacefully without any arms in order to show dissenting voices cannot be construed as a criminal offence. Hence, this Court has to invoke its provisional power and quash the proceedings.

4. The learned Additional Public Prosecutor submitted that on 13.06.2020 at 11.00 a.m, the police got an information that the accused were assembled together illegally, despite the prohibitory order under Section 144 IPC was in force, they were obstructing the vehicles coming on that way. Though they were warned by the police, they did not disperse, but continued to stay and caused obstruction to the traffic and disturbance to the general public.



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5. On the face of the FIR itself, it is not seen that the petitioners were affected with Corona Virus and despite that, they assembled together for the purpose of spreading the disease to others. So, without any such ground materials, there is no necessity to invoke the provisions of the Special Acts like Section 3 of Epidemic Disease Act and Section 51(b) Disaster Management Act along with 270 IPC. Further, no specific overtact is seen on the part of the petitioners that they were doing certain acts which would endanger the life and personal safety to others and there is no ground to attract the offence under Section 336 IPC also. The petitioners were seen to have assembled for protesting certain violations of human rights alleged to have occurred in the State of Uttar Pradesh and New Delhi. The unlawful assembly is defined under Section 141 IPC as under:

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is-

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal



process; or

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(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do”.

6. A reading of the FIR does not disclose that the petitioners were assembled with any common object of committing the acts enunciated under Section 141 IPC. Without any ground materials to show that the petitioners had assembled in an unlawful manner, they cannot be punished for the offence under Section 143 of IPC. In fact, when the ground offence (i.e) unlawful assembly itself does not have any material to get substantiated, the rest of the offences will not stand. There is no allegation that the petitioners had committed any act of violence. Though the prohibitory order under Section 144 of IPC might be in force, there cannot be any reason to charge the petitioners under various charges for having been present



somewhere without any unlawful object. The petitioners had produced the copies of the FIR registered in Crime No.1670, 1671 and 1672 of 2020. On perusal of the said FIRs, it would show that the very same allegations have been made against the persons in other FIRs. Many FIR's have been registered for the alleged offence which is said to have occurred in the same transaction. If several people other than the petitioners were present in the place of occurrence, it will not be easy for a single officer who registered the FIR to manage the crowd and he would have sought the help of the senior police officer to get more police force. There was no commotion in the crowd and they did not endanger the life of any persons or property. The entire materials produced before this Court are found to be not satisfactory to make out the above stated various offences against the accused.

7. So far as Section 188 is concerned, the special procedure as contemplated under Section 141 Cr.P.C ought to have been followed. No case can be registered under Section 188 of IPC without making any complaint to the Court in accordance with Section 195(1)(a)(i) of Cr.P.C . In the case of **C.Muniappan and Others .Vs. State of Tamil Nadu** reported in (2010) 9 SCC 567, the Hon'ble Supreme Court has held as



follows:

Charges under *Section 188 IPC* :

27. Section 195 Cr.PC reads as under :

"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*

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

*28. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under *Section 188 IPC* or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless*



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prosecutions. This provision has been carved out as an exception to the general rule contained under [Section 190 Cr.PC](#) that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the [Cr.PC](#) like [sections 196](#) and [198](#) do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide [Govind Mehta v. The State of Bihar](#), AIR 1971 SC 1708; [Patel Laljibhai Somabhai v. The State of Gujarat](#), AIR 1971 SC 1935; [Surjit Singh & Ors. v. Balbir Singh](#), (1996) 3 SCC 533; [State of Punjab v. Raj Singh & Anr.](#), (1998) 2 SCC 391; [K. Vengadachalam v. K.C. Palanisamy & Ors.](#), (2005) 7 SCC 352; and [Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.](#), AIR 2005 SC 2119).

29. The test of whether there is evasion or noncompliance of [Section 195 Cr.PC](#) or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In [Basir-ul-Haq & Ors. v. The State of West Bengal](#), AIR 1953 SC 293; and [Durgacharan Naik & Ors v. State of Orissa](#), AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of [IPC](#), though in truth and substance, the offence falls in a category mentioned in



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Section 195Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

30. In M.S. Ahlawat v. State of Haryana & Anr., AIR 2000 SC 168, this Court considered the matter at length and held as under :

"...Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section." (Emphasis added)

31. In Sachida Nand Singh & Anr. v. State of Bihar & Anr., (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

"7. ...Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge.

Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise." (Emphasis supplied)

32. In Daulat Ram v. State of Punjab, AIR 1962 SC 1206, this



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Court considered the nature of the provisions of [Section 195 Cr.PC](#). In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

"4...The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

5.The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."
(Emphasis added)

33. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of [Section 195Cr.PC](#) are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction".

8. It is reliably learnt that the Government has taken proactive steps to drop the cases registered against the petitioners during the pandemic in the



public interest. In such circumstances, I feel that no fruitful purpose will be served in allowing the investigation in a case which is bald and trivial. The materials available on record are not sufficient to make out a case for which the petitioners have been charged with. Hence, I feel it is appropriate to quash the proceedings by invoking the powers of this Court under Section 482 of Cr.P.C.

9. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.1672 of 2020 on the file of the respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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To

1.The Special Sub Inspector of Police
Muthupettai Police Station
Tiruvarur

2.The Public Prosecutor
High Court of Madras.

R.N.MANJULA, J.,
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**Crl.O.P No.4936 of 2021
and
Crl.M.P No.3147 of 2021**

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