

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.19378 of 2020
and
Crl.MP.Nos.8167 and 8169 of 2020

1. Vinoth
2. Sugumar
3. P.T.Prinspaul
4. Dhanasekar
5. Krishnamoorthy
6. Sekar
7. Jegadeesan
8. Nirmal Kumar
9. Anbarasu
10. Sathya Narayanan
11. Karunanithi
12. Lingeswaran
13. Kogula Krishnan
14. Pushpalatha
15. Jayakumar
16. Raja
17. Murali
18. Hari Babu
19. Ramalingam
20. Ezhilarasi
21. Senthil Kumar
22. Krishnaveni
23. Thangaraj
24. Sitrarasu
25. Prabhakaran

... Petitioner

Vs.

1. The Inspector of Police,
G-1, Vepery Police Station,
Chennai-600 007.
(Crime No.414/2017)

2. Sivakumar,

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the C.C.No.8028 of 2017 on the file of the learned II Metropolitan Magistrate Court, Egmore at Chennai and quash the same.

For Petitioners : Mr.S.Thiagarajan
For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)
for R1

O R D E R

This petition has been filed by the accused Nos.2 to 26 to call for the records of the CC.No.8028 of 2017 on the file of the learned II Metropolitan Magistrate Court, Egmore at Chennai and quash the same.

2. The learned counsel for the petitioners has submitted that an FIR was registered in Cr.No.414/2017 against the petitioners herein under Sections 143, 341 and 188 of IPC. He further submitted that the complainant himself has proceeded to investigate the matter and filed the final report. Hence, the investigation is vitiated. He further submitted that based on the said final report, the learned II Metropolitan Magistrate, Egmore, Chennai has taken the case on file. He further submitted that as per Section 195(1)(a) of Cr.P.C., taking cognizance in respect of the offence under Section 188 IPC can be made only based on the complaint filed by the concerned Officer in writing but in this case, the said procedure has not been followed and on the contrary, the respondent police filed a final report and based on the said police report, the learned II Metropolitan Magistrate, Egmore, Chennai, has taken the case on file and on that ground also, the proceedings against the petitioners in C.C.No.8028 of 2017 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai has to be quashed.

3. The learned Government Advocate (Crl.Side) has fairly conceded that the Officer, who lodged the complaint against the petitioners has himself investigated the matter and filed the final report. Further, he fairly conceded that taking cognizance of the offence under Section 188 of IPC is barred by Section 195(1)(a) Cr.P.C., hence, he prayed to pass an appropriate order.

4. Section 195(1)(a) Cr.P.C. Reads thus:

"Section 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) if any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 to 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:"

5. From the aforesaid provision, it is clear that no Court shall take cognizance of the offences punishable under Sections 172 to 188 (both inclusive) of Indian Penal Code, except on the complaint in writing of the public servant concerned or of some public servant to whom he is administratively subordinate. In this case, no such complaint has been filed in respect of the offence under Section 188 IPC, but on the contrary, the respondent has filed a final report and based on the same, the Magistrate has taken the case on file.

6. Since taking cognizance of the case in respect of the offence under Section 188 IPC is not in accordance with the provision of Section 195(1)(a) Cr.P.C., the other offences under Sections 143 and 341 IPC are being ancillary offences, the entire final report is liable to be quashed. Apart from that it appears that the officer, who lodged the complaint has himself investigated the matter and filed a final report. On that ground, the investigation is vitiated and the said charge sheet is also liable to be quashed.

7. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners herein in C.C.No.8028 of 2017 alone quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vv

To

- 1.The Metropolitan Magistrate No.II, Egmore, Chennai.
- 2.The Chief Metropolitan Magistrate, Egmore, Chennai.
- 3.The Inspector of Police,
G-1, Vepery Police Station, Chennai-600 007.
- 4.The Public Prosecutor, High Court, Madras.

+1cc to Mr.B.Thiyagarajan, Advocate SR. No. 40123

Cr1.O.P.No.19378 of 2020
and

Cr1.MP.Nos.8167 and 8169 of 2020

PMK (CO)

PR (21/07/2022)