



CrL.O.P(MD).No.16557 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.9.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CrL.O.P(MD).No.16557 of 2022
and CRL.M.P.No.11041 of 2022

A.R.R.Seenivasan
S/o. Raju Naicker,
D/no.1/94 Alagapuri Village,
Mesalur Post, Virudhunagar District.
(MLA, Virudhunagar Constituency,
Virudhunagar District.)

... Petitioner

Vs.

1.The State rep by
The Sub Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District
(Crime No.368 of 2017).

2.Bhuvaneshwari,
The Sub Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.

... Respondents



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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings of First Information Report in Crime No.368 of 2017 pending on the file of the 1st respondent police and quash the same in respect of petitioners/Accused No.1 herein.

For Petitioners : Mr.S.Agilesh Kumar

For RR1 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.368 of 2017 on the file of the first respondent, thereby having been taken cognizance for the offences under Sections 341, 143 and 188 of I.P.C., as against the petitioners.

2. The case of the prosecution is that the petitioner along with other accused involved democratic agitation conducted by DMK political party to support "Jallikattu" event, and thereby restrained the public and caused traffic. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 341,



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143, and 188 of IPC in Crime No.368 of 2017, on the file the 1st respondent police.

3. The learned counsel appearing for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also right to freely express once view or constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble that is so essential to a 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 he 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. However, the officials of the respondent



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police had beaten the petitioner and others. When there was lot of members involved in the protest, the respondent police had registered this case, under Sections 341, 143, and 188 of IPC as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate (CrL.Side) submitted that the petitioner along with others raised agitation against the Government and the officials of the Government and thereby restrained the public and caused traffic and there are specific allegations as against the petitioner to proceed with the trial. 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. More over, the petitioner is an habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.



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5. Heard Mr.S.Agilesh Kumar, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the first respondent.

6. On perusal of the charge, it is seen that the petitioner along with other accused involved democratic agitation conducted by DMK political party to support "Jallikattu" event, and thereby restrained the public and caused traffic. Therefore, the respondent police levelled the charges under Sections 341, 143 and 188 of IPC 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:

“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



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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 trends 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 188 of 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 :-



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“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 ***Mahaboob Basha Vs. Sambanda Reddiar and others*** reported in ***1994(1) Crimes, Page 477***. He also relied upon a judgment in



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a batch of quash petitions, reported in **2018-2-L.W. (Crl.) 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 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



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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



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(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



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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. It is to be noted that while exercising the power under Section 482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has been held as follows :

“

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information



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Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or -complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the



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concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. It is also relevant to note the definition of Unlawful Assembly:

“Unlawful Assembly-

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

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



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(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.-

11. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The accused had not shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.

12. 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 of IPC. He is not a competent person to register FIR for the



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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 petitioner and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

13. Accordingly, the proceeding in FIR in Crime No. 368 of 2017 pending on the file of the first respondent police, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

15.9.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
vsn



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G.K.ILANTHIRAIYAN, J.

vsn

To

- 1.The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District
2. The Public Prosecutor,
High Court, Madras.

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