



Crl.O.P.No.27169 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.27169 of 2022

Sivasamy

...Petitioner

Vs.

The Inspector of Police,
Thondamuthur Police Station,
Coimbatore.
(Crime No.31 of 2017)

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings of Crime No.31 of 2017 on the file of the respondent and quash the same in respect of the petitioner.

For Petitioner : Mr.R.Murali

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

ORDER

This Criminal Original Petition is filed to quash the proceedings in Crime No.31 of 2017 on the file of the respondent.

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2. The case has been registered against the petitioner and 68 others for the offences under Sections 143, 188 and 341 of I.P.C. on the allegation that on 31.03.2017, at about 9 a.m the petitioner along with others under the head of the first accused Senathipathi proceeded to Thondamuthur to Poluvampatti road for demanding water and caused disturbance to the general public and blocked the traffic.

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

4. The learned counsel for the petitioner submitted that the charges for which the case has been registered were not made out with the materials on record.

5. 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-



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(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

(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 petitioner along with 68 others were assembled with any common object of committing the acts enunciated under Section 141 IPC. Without any ground materials to show that the petitioner had assembled in an unlawful manner, he 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 the rest of the offences will not stand. There is no allegation that the petitioners had committed any act of violence. There was no commotion in the crowd and they did not endanger the life of any persons or property.

7. 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:

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 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 Section 195 Cr.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 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. In the present case, no written complaint from a public servant is given in terms of Section 195 of Cr.P.C., For the offences said to have been taken place as early as in the year 2017, charge sheet has not been filed, till now. It is alleged that the petitioner and 68 others had formed a group and they had proceeded for demanding water and other facilities and for which the case has been registered under Sections 143, 188 and 341 of I.P.C., For the offence punishable under Section 143 of IPC, the maximum punishment is 6 months Simple Imprisonment. Since the charge sheet has not been filed for nearly 5 years, the said offence has been bared by limitation in view of Section 468 of Cr.P.C.,

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



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10. Accordingly, this Criminal Original Petition stands allowed and the

FIR in Crime No.31 of 2017 on the file of the respondent is hereby quashed
as against the petitioner.

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Index:yes/No

Speaking order / Non speaking order



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To
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1. The Inspector of Police,
Thondamuthur Police Station,
Coimbatore.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA,J.

vum

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