



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 14.12.2021
PRONOUNCED ON: 25.01.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Crl.O.P. (MD)No.1300 of 2019
and
Crl.M.P. (MD)Nos.639 and 640 of 2019

1.Karthi
2.Vinith
3.Praveenkumar
4.Parthiban
5.M.Perumu
6.Selvam

: Petitioners/Accused Nos.1 to 6

Vs.

State represented by

1.The Inspector of Police,
Batlagundu Police Station,
Dindigul District.
(Cr.No.368 of 2015)

: 1st Respondent / Complainant

2. Ganeshkumar
Village Administrative Officer,
Batlagundu,
Dindigul District.

: 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records relating to C.C.No.198 of 2016, on the file of the Judicial Magistrate, Nilakkottai and quash the same as against the petitioners.

For Petitioners : Mr.M.Karunanithi

For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1

: No Appearance for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No.198 of 2016, on the file of the Judicial Magistrate, Nilakkottai and quash the same.



2. The petitioners are the accused Nos.1 to 6 in C.C.No.198 of 2016, pending on the file of the Judicial Magistrate Court, Nilakkottai. On the basis of the complaint lodged by the Village Administrative Officer of Batlagundu, Dindigul District, second respondent herein, F.I.R., came to be registered in Cr.No.368 of 205 against the present petitioners for the alleged offences under Sections 290, 291, 186, 187, 188 I.P.C., r/w 192(A), 158, 177 of the Motor Vehicles Act and Rule 21(10) of the Motor Vehicles Rules. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., dated 26.10.2015 against the petitioners for the alleged offences under Sections 290, 291, 186, 188 I.P.C., r/w 192(A), 158, 177 of the Motor Vehicles Act and Rule 21(10) of the Motor Vehicles Rules and that the case was taken on file in C.C.No.198 of 2016 and the same is pending on the file of the Court of Judicial Magistrate, Nilakkottai.

3. The case of the prosecution is that on 18.09.2015 at about 15.40 hours, in Batlagundu main road and in front of Meenakshibavan Hotel, when the Vinayagar Idol procession was proceeding, the fourth accused had taken a tractor bearing Registration No.TN-20-2019 by loading Vinayagar Idols and also allowed the other accused to travel in the said goods vehicle, that they had also arranged mike set and loud speaker and played songs with high volume and thereby caused nuisance to the public, that they had violated the directions issued by the Police and Revenue Department and also by the Madurai Bench of Madras High Court and that they have also used the tractor without any permission and without any valid documents.

4. The learned Counsel for the petitioners would submit that the learned Judicial Magistrate ought not to have taken cognizance on the basis of the final report, as he was barred from taking cognizance except on a complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate under Section 195 Cr.P.C., for the offences under Sections 172 to 188 I.P.C., and that therefore, the cognizance taken on the final report filed by the first respondent is illegal.

5. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in ***C. Muniappan & Ors vs State Of Tamil Nadu*** in ***CRIMINAL APPEAL NOS. 127-130 OF 2008***, dated 30.08.2010 and the relevant passages are extracted hereunder:

"20. 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

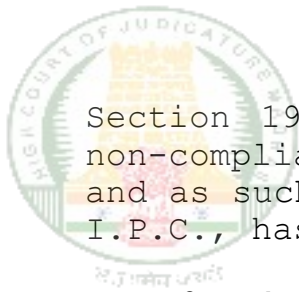


court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition 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).

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC."

6. It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 I.P.C., except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively subordinate. A learned Single Judge of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in **2018(2) LW (Cr1.,) 606**, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 I.P.C., and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173(2) Cr.P.C.

7. As per the above settled legal position, there must be a complaint by a public servant who is lawfully empowered under



Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings void *ab initio* and as such, the charge sheet laid for the offence under Section 188 I.P.C., has to necessarily be quashed.

8. The learned Counsel for the petitioners would submit that no specific averments had been mentioned in the F.I.R to invoke the offences alleged in the F.I.R., that no specific overt act had been attributed against the petitioners in the final report, that there was no report or complaint from any public that the vehicle was driven rashly, that the respondent police has not sent any summons to the driver of the tractor to produce the documents relating to that vehicle, that there is no material in the final report that the petitioners have caused public nuisance and that the prosecution has neither shown that there was an order of injunction passed by the public servant nor that the same has been violated by the petitioners and that therefore, the respondent has neither averred nor produced any material to prove the alleged charges under Sections 290, 291 I.P.C., and the provisions of the Motor Vehicles Act.

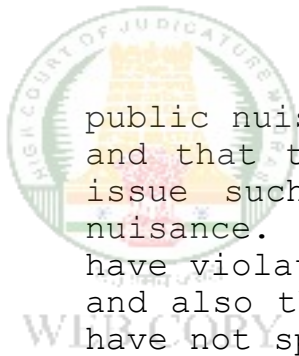
9. Section 290 I.P.C., covers all such cases of public nuisance for which no separate provisions for punishment under the Code have been made.

10. As already pointed out, the prosecution has simply alleged that the petitioners by playing the songs through loud speakers had caused public nuisance to the public. As rightly pointed out by the learned Counsel for the petitioners, except the Village Administrative Officer, who is the defacto complainant and his Assistant, no other independent witness has been examined by the Investigating Officer. Admittedly, the alleged incident was shown to be occurred in the Vinayagar Idol procession.

11. A learned Judge of this Court in ***S.Kumarasamy and Others Vs. State represented by the Inspector of Police, C1, Flower Bazaar Police Station, Chennai*** in ***Crl.O.P.No.22811 of 2019***, dated 26.08.2019, while considering the charge under Section 290 I.P.C., has held,

"In so far as the offence under Section 290 of IPC is concerned, this Court is of the considered view that no public nuisance has been committed by the petitioners and even otherwise it is a non cognizable offence which is punishable with a fine of Rs.200/- and it would have required a permission to register an FIR by getting an order under Section 155 of Cr.P.C."

12. Now turning to Section 291 I.P.C., which deals with continuous of nuisance after injunction to discontinue. Under Section 291 I.P.C., the accused must either repeat or continue



public nuisance and the accused must be enjoined by a public servant and that the public servant must be having authority under law to issue such an injunction so as to not repeat or continue such nuisance. Though the prosecution has alleged that the petitioners have violated the directions of the Police and the Revenue Officials and also the orders of the Madurai Bench of Madras High Court, they have not specified the directions or orders which have been violated by the petitioners. Moreover, as rightly contended by the learned Counsel for the petitioners, the first respondent has not shown that the injunction order was in force at that point of time. Considering the above, this Court has no hesitation to hold that the averments made in the final report will not attract any of the ingredients under Sections 290 and 291 I.P.C.

13. As rightly contended by the learned Counsel for the petitioners, it is not the case of the prosecution that they have summoned the driver or the owner of the vehicle to produce the documents relating to the vehicle and despite the receipt of the summons, they have failed to produce the same. It is not the case of the prosecution that the police from the first respondent police station were present at the occurrence place and demanded the driver of the vehicle to show the documents relating to the vehicle, but he has refused to show the documents. Moreover, even according to the prosecution, the petitioners have not indulged in any act of violence. Considering the above, this Court is of the view that it is a fit case to quash the proceedings initiated by the first respondent and taken cognizance by the Court of Judicial Magistrate, Nilakkottai. In view of the above, the impugned proceedings in C.C.No.198 of 2016, on the file of the Court of Judicial Magistrate, Nilakkottai are liable to be quashed.

14. In the result, this Criminal Original Petition is allowed and the impugned proceedings in C.C.No.198 of 2016, on the file of the Court of Judicial Magistrate, Nilakkottai as against the petitioners are quashed. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

SSL

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

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correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate, Nilakkottai.

2. The Inspector of Police,
Batlagundu Police Station,
Dindigul District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.KARUNANITHI, Advocate (SR-2492[F] dated 25/01/2022)

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