



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2021

Delivered on : 02.02.2022

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)Nos.8680 & 8681 of 2019

and

Crl.M.P. (MD)Nos.5427, 5428, 5429 & 5430 of 2019

Crl.O.P. (MD)No.8680 of 2019:

Vijay

... Petitioner/
Accused No.15

vs.

1.State represented by
The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.

... 1st Respondent/
Complainant

2.F.Anto Pradeep,
Sub-Inspector of Police,
Panagudi Police Station,
Tirunelveli District.

...2nd Respondent/
Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the charge sheet dated 30.01.2018 (produced before the Court on 19.11.2018) in C.C.No.306 of 2018 on the file of the learned Judicial Magistrate , Valliyoor, Tirunelveli, which was filed against the petitioner and quash the same as illegal.

Crl.O.P. (MD)No.8681 of 2019:

Vijay

... Petitioner/
Accused No.16

vs.

1.State represented by
The Inspector of Police,

<https://hcservices.ecourts.gov.in/hcservices/>



Panagudi Police Station,
Tirunelveli District.

... 1st Respondent/
Complainant

2.Sahadevan,
Village Administrative Officer,
Panagudi Village Part-II
Tirunelveli District.

...2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the charge sheet dated 30.01.2018 (produced before the Court on 19.11.2018) in C.C.No.308 of 2018 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli, which was filed against the petitioner and quash the same as illegal.

(in both cases)

For Petitioner : Mr.G.Prabu Rajadurai
for Mr.V.Rajiv Rufus

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl. side) for R1
No appearance for R2

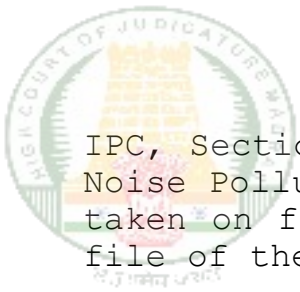
COMMON ORDER

These Criminal Original Petitions have been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.306 of 2018 and C.C.No.308 of 2018 pending on the file of the Court of the Judicial Magistrate, Valliyoor, and quash the same.

2.The petitioner is the accused No.15 in C.C.No.306 of 2018 and the accused No.16 in C.C.No.308 of 2018 pending on the file of the Court of the Judicial Magistrate, Valliyoor.

3.In Crl.O.P.(MD)No.8680 of 2019, on the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.50 of 2018 against seven persons for the alleged offences under Sections 143, 188, 353, 286 IPC, Section 3-A of TN Town Nuisance Act, 1889 and Section 3 of the Noise Pollution (Regulation and Control) Rules 2000.

4.The first respondent after completing the investigation, has laid a final report dated 30.01.2018 under Section 173 Cr.P.C. against 22 accused arraying the petitioner as the accused No.15 for the alleged offences under Sections 143, 188, 353, 286, 290, 291



IPC, Section 3-A of TN Town Nuisance Act, 1889 and Section 3 of the Noise Pollution (Regulation and Control) Rules 2000 and the case was taken on file in C.C.No.306 of 2018 and the same is pending on the file of the learned Judicial Magistrate, Valliyoor.

5.In Crl.O.P.(MD)No.8681 of 2019, on the basis of the complaint given by the second respondent therein, FIR came to be registered in Crime No.53 of 2018 against six named persons and others for the alleged offences under Sections 143, 188, 290, 291, 353, 286 IPC, Section 3-A of TN Town Nuisance Act, 1889 and Section 3 of the Noise Pollution (Regulation and Control) Rules 2000.

6.The first respondent, after completing the investigation, has filed a final report dated 30.01.2018 under Section 173 Cr.P.C. against 29 persons arraying the petitioner as the accused No.16 for the alleged offences under Sections 143, 188, 290, 291, 353, 286 IPC, Section 3-A of TN Town Nuisance Act, 1889 and Section 3 of the Noise Pollution (Regulation and Control) Rules 2000 and the case was taken on file in C.C.No.308 of 2018 and the same is pending on the file of the learned Judicial Magistrate, Valliyoor.

7.Admittedly, the petitioner is a Village Administrative Officer (VAO) and at the relevant point of time, he was working as a Village Administrative Officer (VAO) at South Karunkulam, Radhapuram Taluk, Tirunelveli District.

8.In Crime No.50 of 2018, the case of the prosecution is that on 23.01.2018 at about 02.00 a.m., accused 1 to 22 had assembled illegally at the Hanuman River and exploded fire crackers without any permission and without taking any safety measurements and violating the rules regarding the pollution control and thereby, the accused disturbed the public peace and prevented the Government servants from discharging their duties.

9.In Crime No.53 of 2018, the prosecution case is that on 24.01.2018 between 00.55 a.m. and 01.20 a.m., accused 1 to 29 had assembled illegally at the Hanuman River and exploded fire crackers without any permission and without taking any safety measurements and violating the rules regarding the pollution control and thereby, the accused disturbed the public peace and prevented the Government servants from discharging their duties.

10.In both the cases, the prosecution has alleged that Thaipusam festival was going on in Panagudi Arulmigu Ramalingaswamy Udanurai Sivakami Ammbal and Shri Narasinga Perumal Kovil temple from 21.01.2018, that though the police authorities have directed the Uravin Murai Nadar community people to burst the crackers between 09.00 p.m. and 10.00 p.m. on 22.01.2018 and also directed the Adhi Dravidar community people to burst the crackers between 09.00 p.m. and 10.00 p.m. on 23.01.2018, they have exploded the



crackers between 00.40 and 01.15 hours on 23.01.2018 and between 00.55 and 01.20 hours on 24.01.2018 respectively, that despite the defacto complainant and other police officials had informed them about the orders of the Deputy Superintendent of Police and the direction of the Hon'ble Madurai Bench of Madras High Court, by exploding the crackers, they have prevented the police officials from discharging their duties and also caused disturbance to the nearby residents and inmates of the hospital and caused damage to the pollution.

11.The case of the petitioner is that he was the resident of Bashkarapuram, Pannagudi, that when the Radhapuram Tahsildar came to that place in the evening on 22.01.2018 to conduct the peace committee meeting, he asked the petitioner to come along with him to the police station as the petitioner was working under the said Tahsildar, that the petitioner accompanied him to the police station, that the petitioner visited the police station along with Tahsildar on many occasions on 22.01.2018, 23.01.2018 and 24.01.2018, that since the devotees got agitated against the first respondent, the first respondent got irritated and registered FIR against so many people and that since the petitioner was present in the police station to help the Tahsildar, the name of the petitioner was also included in the charge sheet with an ulterior motive.

12.The learned counsel for the petitioner would submit that perusal of the complaint, alteration report, final report, statements under Section 161 Cr.P.C. and recording of CCTV in the first respondent's police station would disclose that the allegations against the petitioner was fabricated and imaginary and that the petitioner had no connection whatever with the alleged occurrences and that the petitioner had no bad antecedents.

13.The learned counsel for the petitioner would further submit that there is a clear bar for taking cognizance of an offence under Section 188 IPC, without a complaint, as contemplated under Section 195 Cr.P.C.

14.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."

15.It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 IPC, 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 IPC, and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173 Cr.P.C.

16.Considering the above, the position of law is well settled that to 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 final report filed for the offence under Section 188 IPC, has to be quashed.

17. Now turning to the offence under Section 353 IPC, the Hon'ble Supreme Court in **Manik Taneja and another Vs. State of Karnataka and another** reported in (2015) 7 SCC 423, while considering the quashment of charge sheet has held as follows:-

"A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section 353 IPC are not made out."

18. In the present case, admittedly, there is no allegation or averment that the petitioner has assaulted the Government officials or used criminal force with an intention to prevent or deter the officials from discharging their duties. Considering the uncontroverted allegations, this Court has no hesitation to hold that the ingredients of the offence under Section 353 IPC, are not made out.

19. Regarding the offence under Section 290 and 291 IPC, it is necessary to refer the judgment of this Court in **Crl.O.P. (MD) No.1300 of 2019** dated 25.01.2022 in **Karthi and others vs. State represented by the Inspector of Police, Batlagundu Police Station, Dindigul District and another** has held,

"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 Bazzar 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."

20.In the case on hand also, though the prosecution has alleged that the petitioner and the other accused have violated the direction of the police officials and also the orders of the Hon'ble Madurai Bench of Madras High Court, they have not specified the direction or orders which have been violated by the accused. It is not the specific case of the prosecution that injunction order was in force at that point of time.

21.Coming to the offence under Section 143 IPC, it is necessary to refer the following passage in **Jeevanandham's case** cited supra.

"32.....

2.In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution."

22.As rightly held in **Jeevanandham's case**, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

23.The learned counsel for the petitioner has relied on a judgment of this Court in **Crl.O.P. (MD)No.8242 of 2018 dated 01.11.2019** in **Subramaniya Thevar and others vs. The Inspector of Police, Achanpudur Police Station and another**. In the said case, FIR came to be registered for the offences under Sections 188, 353, 286, 290, 291 of IPC and Section 3-A of the Tamil Nadu Town Nuisance Act, 1889 and Section 15(1) of the Environment Protection Act, 1986 and the relevant passages are extracted hereunder:-



"6. On perusal of the F.I.R, it is seen that the petitioners have attempted to nuisance before the Panmazli Nagreeswaramudayat Temple, without any permission in prohibited area, while prohibitory order was in force. Therefore the respondent police levelled the offences under Sections 188, 353, 286, 290, 291 of IPC and Section 3-A of the Tamil Nadu Town Nuisance Act, 1889 and Section 15(1) of the Environment Protection Act, 1986 as against the petitioners. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioners. 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 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, 353, 286, 290, 291 of IPC and Section 3-A of the Tamil Nadu Town Nuisance Act, 1889 and Section 15(1) of the Environment Protection Act, 1986, 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 :-

"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-



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(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. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 188, 353, 286, 290, 291 of IPC and Section 3-A of the Tamil Nadu Town Nuisance Act, 1889 and Section 15(1) of the Environment Protection Act, 1986. He is not a competent person to register FIR for the 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 petitioners have attempted to nuisance in prohibited area and does not satisfy the requirements of Section 143 of IPC. Therefore, the first information report cannot be sustained and it is liable to be quashed."

The above decision is squarely applicable to the case on hand. Admittedly, in the case on hand, it is not the case of the prosecution that the petitioner had indulged in any act of violence. The petitioner and the other accused had assembled to celebrate the Thaipusam festival by bursting crackers.

24. Moreover, as rightly contended by the learned counsel for the petitioner, in both the cases, there is no specific overt act attributed against the petitioner herein. Except the two Observation Mahazar witnesses, all other witnesses cited in the charge sheet are police officials.



25.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 the Judicial Magistrate, Valliyoor. In view of the above, the impugned proceedings in C.C.No.306 of 2018 and C.C.No.308 of 2018, on the file of the Court of the Judicial Magistrate, Valliyoor against the petitioner are liable to be quashed.

26.In the result, these Criminal Original Petitions are allowed and the impugned proceedings in C.C.No.306 of 2018 and C.C.No.308 of 2018, on the file of the Court of the Judicial Magistrate, Valliyoor are quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

To

1.The Judicial Magistrate,
Valliyoor.

2.The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.

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

Crl.O.P.(MD)Nos.8680 & 8681 of 2019

and

Crl.M.P.(MD)Nos.5427, 5428, 5429 & 5430 of 2019

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