



Crl.R.C.No.679/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.679 OF 2023 &
Crl.M.P.Nos.5179 and 5178 of 2023

John Samuel
Petitioner

...

The State represented by
Inspector of Police,
S-11, Tambaram Police Station,
Chennai 600 045.
(Crime No.609 /2022)

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to set aside the order passed by the learned Judicial Magistrate-I, Tambaram, dated 14.11.2022 in Crl.M.P.No.2171 of 2021 in C.C.No.129 of 2017.

For Petitioner : Mr.M. Rajasekar

For Respondent : Mr. R. Vinothraja
GA (Crl.side)



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ORDER

Challenging the order pasased by the Judicial Magistrate-I, Tambaram, dated 14.11.2022 in Crl.M.P.No.2171 of 2021 in C.C.No.129 of 2017, dismissing the petition filed by the petitioner seeking discharging him from the offence, the present Criminal Revision Case is filed.

2. The learned counsel for the petitioner submitted that the respondent police prosecuted the petitioner under section 188 of IPC. Pursuant to filing of final report, the trial court took the case in C.C.No.129 of 2017. He further submitted that the respondent police is not a competent authority to register an FIR for the offence under section 188 of IPC., and the same is violation of Section 195(1-A) of Cr.P.C., 1973.

3. In support of his contention, he relied upon the judgment of this court reported in **2018-2-LW (Crl.)606 in Crl.OP.(MD) 1356 of 2018**, dated 20.09.2018 in the case of **Jeevanandham and others vs. State, represented by the Inspector of Police, Karur District**. In view of the principle stated by this



Court in the above case, the prosecution case is unsustainable. The trial court having failed to consider the above fact, dismissed his petition seeking to discharge from the offence and the same is challenged in this Criminal Revision Case. Thus, he pleaded to allow this Criminal Revision Case.

4. When the matter is taken up for hearing, the learned Govt. Advocate (crl.side) fairly conceded that in view of section 195 (1)(a) of Cr.P.C., the prosecution is not competent to register the case under section 188 of IPC.

5. Heard both sides and perused the impugned order and entire materials placed on record.

6. The case of the prosecution is that on 22.08.2013, a complaint was lodged by the Commissioner of Tambaram Municipality, alleging that the petitioner is making arrangements to reopen the shop on 18.12.2016, situate at the premises which had already been heavily damaged due to a fire accident that occurred on 11.04.2016 and 04.07.2016 and the action of the petitioner leads to endangering of human lives. In this regard, a notice under section 339 of Tamil Nadu District Municipalities Act was also issued to the petitioner, who is



the owner of the abovesaid premises for demolishing the building as its structural stability was damaged. Insptie of issuance of such notice, the petitioner has been making arrangements for reopening a shop on 18.12.2016 at the abovesaidpremises, which is violation of Section 399 of Tamil Nadu District Municipalities Act.

7. On perusal of records, the fact reveals that the respondent police prosecuted the petitioner/accused for the offence under section 188 of IPC, which was taken on file in C.C.No.129 of 2017 by the Judicial Magistrate I, Tambaram. According to the petitioner, the respondent police is not a competent authority to register an FIR for the offence under section 188 of IPC., and the same is violation of Section 195(1-A) of Cr.P.C., 1973.

Section 195 (1) of Cr.P.C. Read as follows;

"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

(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;'

8. Further, this Court in the case of **Jeevanandham and others vs. State, represented by the Inspector of Police, Karur District in Crl.OP.(MD) 1356 of 2018 reported in 2018-2-LW (Crl.)606**, dated 20.09.2018, after discussing similar type of issue involved in this case, held in paragraph 25 of its judgment 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 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



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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

(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



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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 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 also relied by this Court in a decision made in Crl.OP.(MD) No.18476 of 2019 in the case of **R.Anand Sekaran and others vs. State through, the Inspector of Police and another**, dated 10.12.2019, wherein, the learned Judge, after discussing the decision made in the case of **Jeevnandham and others Vs. State represented by the Inspector of Police, Karur District (cited supra)**, in paragraph 9 of his judgment has held as follows;

'9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under section 188 of IPC and 3 of TNOPPD Act. 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 dos not even state as to how the protest formed by the petitioners and other is an unlawful protest and does nto



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satisfy the requirements of section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed. '

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10. In view of the above legal principles settled by this Court, the criminal prosecution initiated by the respondent police against the petitioner herein is unsustainable. Therefore, the proceedings against the petitioner in C.C.No.129 of 2017 on the file of Judicial Magistrate No.1, Tambaram is not maintainable and in view of the above, the petitioner is discharged from the criminal proceedings. Therefore, the impugned order is hereby set aside and the petitioner is hereby discharged from the case in C.C.No.129 of 2017.

11. The Criminal Revision Case is allowed accordingly. Consequently, the connected Miscellaneous Petitions are closed.

17.04.2023

msr

Index: yes/no

Internet: yes/no

To

1. The Judicial Magistrate-I, Tambaram
2. The Inspector of Police,
S-11, Tambaram Police Station,
Chennai-45.

8/10



3. The Public Prosecutor,
Madras High Court.

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V. SIVAGNANAM, J.

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