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Crl.O.P.No.30599 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.30599 of 2019

and

Crl.M.P. No.16594 & 16595 of 2019

Ramasamy

... Petitioner

Vs.

1. The State Rep. by
The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.
(Crime No.74 of 2016)

2. Murugesan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in S.T.C.No.1069 of 2018 on the file of the Judicial Magistrate, Paramathi and Quash the same.



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For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.S.Balaji, Government Advocate
Crl. Side.
: No Appearance [R.2]

ORDER

This petition has been filed to quash the final report filed for the offences under Sections 341 and 188 IPC made in S.T.C.No.1069 of 2018 on the file of the Judicial Magistrate Paramathi.

2. It is alleged in the final report that on 04.05.2016 at about 5.30 p.m, the petitioner herein with all the other accused without prior notice had protested near Marapalayam Pudhur Bus Stand and obstructed the traffic near the said place.



3. The learned counsel for the petitioner submits that the 1st respondent/ police has no jurisdiction to file a final report under Section 188 IPC in view of the bar under Section 195 (1)(a)(i) of the Criminal Procedure Code. As per the provisions of Section 195 (1)(a)(i) of Cr.P.C, no Court shall take cognizance of offence under Section 188 IPC, unless the complaint is lodged by the Public Servant concerned. In the instant case, no such complaint was lodged and hence order taking cognizance under Section 188 IPC is erroneous.

4. The learned counsel for the petitioner further submitted that petitioner had conducted a peaceful protest and such a protest cannot be deemed to be an offence of wrongful restraint within the meaning of Section 341 IPC. The learned counsel further submitted that in similar cases this Court had quashed the charge sheet i.e; in the case of ***Jeevanandham and others vs. State*** reported in ***2018 SCC online Mad 13698 : (2018) 2 LW (Cri) 606*** and decided on 20.09.2018 and in the case of ***Payas Agamadhu and Ors. Vs. State*** reported in ***MANU/TN/3992/2020*** decided on 28.07.2020.



5. The learned Additional Public Prosecutor fairly concedes that in similar cases this Court had quashed the final report of this nature.

6. This Court on perusal of the impugned final report finds that the petitioner had conducted a peaceful protest near a bus stand, aggrieved by an attack made on certain villagers.

7. As regards the offence under Section 188 of the Indian Penal Code, the first 1st respondent / police has no jurisdiction to lay a final report for the offence under Section 188 of the Indian Penal Code in view of the bar under Section 195 (1)(a)(i) of the Criminal Procedure Code. As per the Section 195 (1)(a)(i) of the Criminal Procedure Code, only a public servant can maintain a complaint and no Court shall take cognizance in the absence of the complaint filed by the said public servant. Hence, the cognizance taken on the basis of final report by the police is erroneous and contrary to the aforesaid provisions.

8. This Court in *Jeevanandham and others vs. State* reported in **2018 SCC online Mad 13698 : (2018) 2 LW (Cri) 606** decided on



20.09.2018 and in a number of other cases following the said judgement including *Payas Agamadhu and Ors. Vs. State* reported in *MANU/TN/3992/2020* decided on 28.07.2020 held that the respondent police has no jurisdiction to register an FIR and to file a final report under Section 188 IPC.

9. As regards the offence under Section 341 IPC, this Court in *Jeevanandham and others vs. State* cited above had held that right to protest peacefully cannot be **stifled** by such prosecutions. Further, in the instant case, this Court finds there are no allegations to suggest that the petitioner has committed offence under Section 341 IPC.

10. For the above reasons, the act of the petitioner in protesting does not attract any of the offences alleged and hence, the charge sheet S.T.C.No.1069 of 2018 on the file of the Judicial Magistrate, Paramathi is quashed.



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WEB COPY 11. Accordingly, the Criminal Original Petition is allowed.

Consequently, the connected miscellaneous petitions are closed.

09.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

1. The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.
2. Judicial Magistrate, Paramathi.



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SUNDER MOHAN. J,

shr

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