



CrI.O.P.No.31447 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.02.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.31447 of 2019 and
CrI.M.P.No.17194 of 2019

S.Killai Ravindran

... Petitioner / Accused No.1

VS.

1.The Inspector of Police,
Killai Police Station,
Cuddalore District.

2.P.Siva Sankaran

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in Crime No.80 of 2019 on the file of the Inspector of Police, Killai Police Station, Cuddalore District and quash the same.

For Petitioner

... Mr.V.Lakshmi Narayanan

For Respondents

... Mr.A.Gopinath,
Govt. Advocate (CrI.Side) for R1



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ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.80 of 2019 on the file of the Inspector of Police, Killai Police Station, Cuddalore District and quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the first respondent.

3. The case has been registered on the complaint given by the second respondent who is the Village Administrative Officer. The first accused is said to have headed a group contained 106 male members and 40 female members. It is alleged that they sat on the road by obstructing the traffic and raising voices. Even though it is stated that there are nearly 150 persons in the place of occurrence, the FIR has been registered only against the four persons whose names alone is mentioned in the complaint. The object of the assembly is to demand separate certificate for the Irular community and that is patent in the allegations made in the complaint itself. Hence, a case has been registered against the petitioner and other accused for the offences under Sections 147, 188 & 341 of IPC.



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4. The learned counsel for the petitioner submitted that none of the offences under Section 188 for which the case has been registered can be made out against the accused and there is no ingredients to attract any criminal offence. In order to prosecute the accused for the offence under Section 188, the procedure prescribed under Section 195 Cr.P.C should be followed. The accused were raising their democratic voice by making certain demands and that cannot be viewed as an unlawful assembly or causing obstruction to the general public.

5. The learned Government Advocate (Crl.Side) submitted that only when the investigation is done, the material details about the occurrence can be known; at the threshold stage itself it cannot be presumed that the accused has not committed any offence.

6. As per Section 141 of IPC., in order to call an assembly of five or more persons as an unlawful assembly, there are ingredients to show that they have the following common object. For a better understanding, the



word 'unlawful assembly' as defined under Section 141 IPC is extracted

hereunder:

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is-

(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”.

7. The accused did not have any criminal force or they did not resist any execution of law or legal process. It is neither the statement of the complainant that they had trespassed into the office of the Village Administrative Officer or they had showed any criminal force to take possession of any property or compelled some one to do something which they are not bound to do. The general voice given by the section of the



villagers or particularly the persons belonging to a specific community by placing certain demands cannot be considered as illegal. It is upto the Government either to make decisions acceding to the demand made by the said community people or not. So the allegations in the FIR does not have any *prima facie* material to make out the offence under Section 147 against the accused for the offence of rioting.

8. Even in the complaint of the second respondent itself it is stated that when the police came, the crowd dispersed. Therefore, the crowd did not have any violent object and they were not armed with weapons. They peacefully dispersed after the police arrived without making any quarrel or committing any unlawful act. It is not the allegation of the second respondent that the accused had confined the second respondent and any staff of his office. So with the generalised allegations, it cannot be concluded that the offence under Section 341 is made out.

9. So far as the offence under Section 188 is concerned, it is for the purpose of punishing the person for disobeying any order promulgated by a



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public servant. But in the case in hand, the FIR does not disclose about what was the order that was in force at the time of the occurrence and how it was disobeyed by the accused. In the absence of any specific allegations about any order passed by any public servant, a person cannot be prosecuted for the offence under Section 188 without any basis. Because the essential ingredient to make out the offence under Section 188 is the existence of any specific public order and the consequential disobedience.

10. As per Section 195 Cr.P.C. there is a specific bar to take cognizance for the offence punishable under Section 172 to 188 IPC and that should be a complaint in writing of the concerned public servant whose orders were disobeyed. The complainant can be either the public servant himself or some other public servant to whom he is administratively subordinate. In this regard, it is worthwhile to cite the judgment of this Court held in the case of *Jeevanandam & Others Vs. State reported in CDJ 2018 MHC 5153* wherein it is held as under :



“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 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 Final Report will not become void ab initio insofar as offences other than [Section 172](#) to [188](#) of IPC and



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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.”

11. In the case in hand also, the complaint has not been filed in compliance of Section 195 Cr.P.C. and further the ingredients to make out the offence under Section 188 is also not present. In view of the above stated reasons, I feel it is appropriate to quash the proceedings as against the petitioner.

12. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.80 of 2019 on the file of the Inspector of Police, Killai Police Station, Cuddalore District, is quashed. Consequently, connected miscellaneous petition is closed.

03.02.2023

Index: Yes/No
Internet: Yes/No
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R.N.MANJULA ,J.



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To

1. The Inspector of Police,
Killai Police Station,
Cuddalore District.

2. The Public Prosecutor,
High Court, Madras.



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