



Crl.O.P.(MD)No.828 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2023

Delivered on : 25.01.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.828 of 2023

and

Crl.M.P.(MD)No.756 of 2023

Muthurajkumar

... Petitioner

Vs.

1.State rep.by
The Inspector of Police,
Austinpatti Police Station,
Madurai.
Crime No.350 of 2021.

2.Village Administrative Officer,
Thopput Village,
Madurai District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the record relating to the proceedings of the First Information Report in Crime No.350 of 2021 on the file of the respondent Police and quash the same in respect of the petitioner/A11.



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For Petitioner : Mr.J.Jesu Raja,

For R1 & R2 : Mr.M.Muthumanikkam,
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders, to call for the records relating to the proceedings of the First Information Report in Crime No.350 of 2021 on the file of the respondent Police and quash the same in respect of the petitioner/A11.

2. The case of the prosecution is that on 30.11.2021, at about 09.00 am in Samayanallur-Thirumangalam National High Way and in the place Koothiyargundu Junction, Office bearers and party workers of BJP and ADMK party have assembled unlawfully and raised slogans to remove the encroachments made in the Nilaiyur Irrigation Tank and they had conducted a road block agitation and that on the basis of the complaint given by the Village Administrative Officer, Thoppur, FIR came to be registered in Crime No.350 of 2021, for the offence under Sections 143, 188, 271, 341 IPC, against 31 named persons and 100 males and 50 females.



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3. The petitioner is the 11th accused in Crime No.350 of 2021 on the file of the respondent Police.

4.The case of the petitioner is that he is working as a load man, that the petitioner was merely present at that time and was added as an accused; that the FIR would disclose that the petitioner and others made slogans against the encroachment made in the irrigation tank; that they have not disturbed the public in any way and that the very registration of FIR is vexatious and that the same is liable to be interfered with.

5. The learned counsel for the petitioner would 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.

6.This Court in Vijay Vs. State represented by the Inspector of Police, Panagudi Police Station, Tirunelveli District in (Crl.OP(MD)Nos. 8680 and 8681 of 2019; dated 02.02.2022), has dealt with the same issue and came to the decision that the complaint must be given by a public



servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and the relevant passages are extracted hereunder :

“ 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



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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 (Crl.) 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 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 final report filed for the offence under Section 188 IPC, has to be quashed.”

7. The above decision is squarely applicable to the case on hand and on applying the same, this Court has no hesitation to hold that the final report filed under Section 188 IPC, is liable to be quashed.



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8. Regarding Section 143 IPC, the learned counsel for the petitioners has relied on the judgment of this Court in ***Crl.O.P(MD) No.12612 of 2022 (Annadurai Vs.The Inspector of Police, South Gate Police Station, Madurai and another)***, dated 06.09.2022 and the relevant passage is extracted hereunder :

“9.In the case on hand, the First Information Report has been registered by the respondents / police for the offences also under Sections 143 and 188 IPC. 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 protest formed by the petitioner and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.”

9. The learned counsel for the petitioners would submit that protest by the party workers raising slogans to remove the encroachment made in the Nilayur irrigation tank, is a democratic right and the same would not constitute an offence under Section 143 IPC.



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10. As rightly contended by the learned counsel for the petitioners, the prosecution does not even state as to how the demonstration conducted by the petitioners is an unlawful protest and as such, this Court has no other option, but to say, that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

11. Now turning to the offence under Section 341 IPC, it is necessary to refer the following passage in ***Jeevanandham and Others vs State, represented by the Inspector of Police,*** reported in ***2018(2) LW (Crl.,) 606.***

“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 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



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of fundamental rights guaranteed under the Constitution. A reading of the Final Report also does not make out an offence under Section 341 Cr.P.C since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.

12. The prosecution in order to invoke Section 341 I.P.C., has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the case on hand, as already pointed out, the petitioners and others have assembled and conducted agitation to remove the encroachments in the Nilaiyur Irrigation Tank and there is absolutely no material to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in ***Jeevanandham's case***, that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the complaint does not make out any offence of the wrongful restraint.



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13. Section 271 IPC speaks about disobedience of quarantine rule, but absolutely there are no material in the complaint so as to attract the offence under Section 271 IPC.

14. Considering the above, this Court has no hesitation to hold that the impugned FIR in Crime No.350 of 2021 on the file of the respondent Police, is liable to be quashed.

15. In the result, the Criminal Original Petition is allowed and the FIR in Crime No.350 of 2021 on the file of Austinpatti Police Station, Madurai District, is quashed. Consequently, connected Miscellaneous Petition is closed.

25.01.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
das



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To

- 1.The Inspector of Police,
Austinpatti Police Station,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-deliver order made in
Crl.O.P.(MD)No.828 of 2023
and
Crl.M.P.(MD)No.756 of 2023

Dated: 25.01.2023