



CrI.O.P.(MD)No.348 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.01.2023

Delivered on : 20.01.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.348 of 2023

1.Selvam

2.Manickam

3.Nagaendran

4.Muthukumar

5.Shanmugam

6.Ramar

7.Chinna Mariappan

: Petitioners

Vs.

1.The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.
Crime No.233 of 2017.

2.Navamani

: Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in the case in S.T.C. No.434 of 2022 on the file of the Judicial Magistrate Court No.I,

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Virudhunagar and quash the same as illegal, abuse process of law, barred by limitation against the petitioners/accused Nos.3, 4, 6, 7, 8, 9 and 12.

For Petitioners : Mr.M.Jothi Basu,

For Respondents : Mr.Muthu Manikkam,
Government Advocate (Criminal Side)
for R1.

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders, to call for the records in the case in S.T.C. No.434 of 2022 on the file of the Judicial Magistrate Court No.I, Virudhunagar and quash the same.

2. The case of the prosecution is that on 13.03.2017 at 10.30 hours, the accused have conducted demonstration in front of Ration Shop No.5, Ahmed Nagar to condemn the shortage of goods in the fair price shops. It is the further case of the prosecution that since the accused have conducted demonstration without any prior permission from the Police, all the accused were arrested and brought to the Police Station and case in Crime No.233 of 2017, under Sections 143, 188 IPC came to be registered.



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3. It is not in dispute that after completing the investigation, the respondent Police has laid the final report and the same was taken on file in S.T.C.No.434 of 2022 and the same is pending on the file of the learned Judicial Magistrate, Virudhunagar.

4. The learned counsel for the petitioners 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.

5.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*



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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 (Crl.,) 606**, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer*



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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.”

6. 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.

7. Regarding Section 143 IPC, the learned counsel for the petitioners has relied on the judgment of this Court in ***CrI.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 :



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“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.”

8. The learned counsel for the petitioners would submit that protest by a group for shortage of goods in fair price shop is a democratic right and the same would not constitute an offence under Section 143 IPC.

9. 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.



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10. 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 No.I, Virudhunagar. In view of the above, the impugned proceedings in S.T.C.No.434 of 2022, on the file of the Court of the Judicial Magistrate No.I, Virudhunagar against the petitioners is liable to be quashed.

11. In the result, the Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.434 of 2022 on the file of the Court of the Judicial Magistrate No.I, Virudhunagar, is quashed as against the petitioners alone.

20.01.2023

NCC : Yes/ No
Index : Yes/No
Internet : Yes/ No
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To

- 1.The Judicial Magistrate,
Virudhunagar.
- 2.The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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Dated: 20.01.2023