



Crl.O.P.(MD)No.605 of 2023

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Reserved on : 10.02.2023

Delivered on : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.605 of 2023
and
Crl.M.P.(MD)No.532 of 2023

1.Lakshmanan

2.Balasubramaniyan

3.Chithirai Kannu @ Chithrai Kannu

4.Poologaraj @ Buloga Raj

5.Natarajan @ Nadaraj

... Petitioners/
Accused 1 to 5

vs.

State through
The Inspector of Police,
V.K.Pudur Police Station,
Tenkasi District.
(Crime No.251 of 2017)

... Respondent/
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to S.T.C.No.1577 of 2017 on the file of the Judicial Magistrate, Alangulam and quash the same.



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For Petitioners : Mr.P.Subbiah

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.1577 of 2017 pending on the file of the Court of the Judicial Magistrate, Alangulam and quash the same.

2. The petitioners are the accused 1 to 5 in S.T.C.No.1577 of 2017 pending on the file of the Court of the Judicial Magistrate, Alangulam.

3. The Sub Inspector of Police attached to V.K.Pudur Police Station, who was in bandobust duty to the Vinayagar Idol immersion procession, has registered a case in Crime No.251 of 2017 against six persons including the petitioners herein for the offences under Sections 143, 188 and 283 IPC on 27.08.2017.

4. The respondent, after completing the investigation, has laid a final report dated 03.09.2017 against six persons including the



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petitioners for the alleged offences under Sections 143, 188 and 283 IPC and the case was taken on file in S.T.C.No.1577 of 2017 on the file of the Judicial Magistrate Court, Alangulam.

5. The case of the prosecution is that on 27.08.2017 at about 12.00 hours, when the police party was in bandobust duty to the Vinayagar Idol immersion procession conducted by the petitioners, the petitioners had conducted the procession in such a way blocking the traffic in Veeranam main road, that despite severe warnings, the petitioners had caused obstruction and disturbance to the traffic and the public and that despite instructions to install CCTV camera in the place where the Vinayagar Idol was installed for worship, they have not installed CCTV camera and thereby violated the conditions imposed.

6. The learned counsel appearing for the petitioners would contend 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.

7. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in ***C. Muniappan & Ors Vs. State Of Tamil***



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Nadu in **CRIMINAL APPEAL Nos. 127-130 of 2008**, dated 30.08.2010

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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



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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.”

8. 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



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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.

9. 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.

10. Regarding the offence under Section 143 IPC, it is necessary to refer the following passage in *Jeevanandham's case*, above referred,

“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 of



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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 of fundamental rights guaranteed under the Constitution.”

11. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

12. In the case on hand, admittedly, it is not the case of the prosecution that some untoward incident had happened on that day. As rightly contended by the learned counsel appearing for the petitioners, the prosecution does not even state as to how the procession conducted by the petitioners after getting necessary permission is unlawful and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of Section 143 IPC.

13. According to Section 283 IPC, whoever, by doing any act, or by omitting to take order with any property in his possession or under his



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charge, caused danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees. Though the prosecution has alleged that the petitioners had caused disturbance to the traffic, they have not produced any material or evidence to show that they have caused any danger, obstruction or injury to any person in that place. As rightly contended by the learned counsel appearing for the petitioners, the prosecution has miserably failed to prove the existence of ingredients to attract Section 283 IPC.

14. Considering the above, this Court concludes that the impugned proceedings in S.T.C.No.1577 of 2017 are liable to be quashed.

15. In the result, this Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.1577 of 2017 pending on the file of the Judicial Magistrate, Alangulam are quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

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

- 1.The Judicial Magistrate,
Alangulam.
- 2.The Inspector of Police,
V.K.Pudur Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl.O.P.(MD)No.605 of 2023
and
Crl.M.P.(MD)No.532 of 2023

Dated : 26.04.2023