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Crl.O.P.(MD)No.1631 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	11.08.2023
Delivered on	27.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.1631 of 2023
and Crl.M.P.(MD) No.1441 of 2023

1.Muthu Rathinam
2.Selvaraj
3.Pandi

... Petitioners/Accused 1 to 3

Vs.

1. The Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.
(Crime No.16 of 2018)

... Respondent/Complainant

2.Selvaraj ... Respondent/Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the impugned complaint in Crime No.16 of 2018 dated 05.01.2018 pending on the file of the first respondent police and quash the same.

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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ORDER

This petition has been filed seeking quashment of Crime No.16 of 2018 pending on the file of the first respondent police.

2. According to the prosecution, on 05.01.2018, the petitioners who have been working as Driver and Conductor in Tamil Nadu State Transport Corporation, Dindigul Unit, for involving in agitation at Dindigul Bus Stand seeking for recommendation of pay commission. The second respondent/Head Constable has filed complaint against the petitioners basing on which a case has been registered against the petitioners in Crime No.16 of 2018 dated 05.01.2018 for the offences under Sections 341, 188, 353 of IPC.

3. Heard learned counsel for the parties and perused the record.

4. Section 188 of IPC runs as under:-

"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such



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order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. "

In order to prove the offence under Section 188 of IPC, the prosecution has to prove that prohibitory orders have been promulgated by a public servant and that the petitioner is aware of such promulgation promulgation of prohibitory orders and then intentionally has violated the said prohibitory orders, only then the charge will sustain. Further as per Section 195 (1) (a) (i) no Court shall take cognizance of the offence in respect of the offence punishable under Sections 170 to 188 of I.P.C., except on a complaint in writing by the public servant, who has



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promulgated. In the case on hand, the public servant who has promulgated the orders has not made any such complaint before the Police. Thereby on the face of it, the Police cannot charge the petitioners under Section 188 of I.P.C. Further the punishment for committing the offence under Section 188 of IPC, imprisonment for a term which may extend to one month or fine which may extend to Rs.200/- or both.

5. The petitioners have also charged for the offence under Section 341 of IPC. Section 341 of IPC runs as under:-

"Punishment for wrongful restraint.

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

The punishment for the offence under Section 341 of IPC is imprisonment which may extend to one month or with fine or both. No complaint is filed by any person alleging that he was prevented from proceedings in a direction which he was intending to proceed. Thereby there are no allegation in respect of offence under Section 341 of I.P.C.



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6. Section 353 I.P.C. runs as under:-

“353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

On going through the above provision, the prosecution is expected to prove that the petitioners have assaulted or used any criminal force against the public servant or to deter the public servant from discharging his duties. On this count also, the case registered against the petitioners required to be quashed.



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7. Section 468 of Cr.P.C. runs as under:-

"468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. "

Considering Section 468 of Cr.P.C., the charge sheet in respect of offences alleged against the petitioner should have been filed within three years from the date of offence. In the case on hand, five years have already been lapsed and the Police have not filed the charge sheet in respect of offences under Sections 341, 188, 353 of IPC thereby, since there is a bar under Section 468 of Cr.P.C. even if charge sheet is filed for the said offences, cognizance cannot be taken.



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8. In view of the discussion made above, this Criminal Original

Petition is allowed and the FIR in Crime No.16 of 2018 dated 05.01.2018

is quashed. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN

To

1.The Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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Dated: 27.09.2023