



Crl.O.P.(MD) No.1364 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.(MD) No.1364 of 2023
and Crl.MP(MD)Nos.1210, 1211 of 2023

Meppal Sakthi @ Sathiyathan

... Petitioner

Vs

1. The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.(Crime No.267 of 2016).

2. Dharmar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the S.T.C.No.423 of 2016 pending on the file of the learned Judicial Magistrate No.1,Sivagangai and quash the same as against the petitioner.

For Petitioner : Mr.Karuppasami Pandian for
M/s.Karuppiah.G
For R1 : Mr.R.Sivakumar
Government Advocate (Crl.Side)



Crl.O.P.(MD) No.1364 of 2023

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ORDER

This criminal original petition has been filed seeking to quash the S.T.C.No.423 of 2016 pending on the file of the learned Judicial Magistrate No.1, Sivagangai.

2. The case of the prosecution is that on 17.04.2016 at 11.30 a.m., the petitioner along with other persons indulged in election campaign seeking votes. At that time, the accused persons travelled in two vehicles and transgressed the election rules by bursting crackers and caused breach of peace. Thereby the petitioner is alleged to have committed offences punishable under Sections 143, 188 and 285 IPC in Crime No.267 of 2016 on the file of the the respondent police, which was taken on file as STC No.423 of 2016, on the file of the learned Judicial Magistrate No.I, Sivagangai.

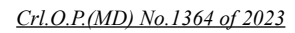
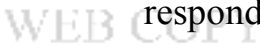
3. Learned counsel appearing for the petitioner would submit that the petitioner is innocent. He would further submit that according to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has written order from the



authority. Further he would submit that the petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. He would further submit that when there was lot of members alleged to have involved in the occurrence, the respondent police had registered this case, under Sections 143, 188 and 285 of IPC as against the petitioner and therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate (Crl.Side) submitted that Section 188 of IPC is a cognizable offence and therefore, it is the duty of the police to register a case. He would also submit that though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard the learned counsel appearing for the parties.



“188. Disobedience to order duly promulgated by public servant — Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under



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his management, disobeys such direction, shall, if such disobedience causes to tender to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person 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 trends 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”

9. The only question for consideration is that whether the registration of case under Sections 143, 188 and 285 of IPC by the respondent is permissible in law or not?

10. In this regard it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973 :-



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“195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and 5 for offences relating to documents given in evidence.

(1) No Courts shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, attempt to commit, such offence, or (iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;...”

11. Therefore, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

12. The learned counsel for the petitioner, in support of his contentions, relied upon a judgement in a batch of quash petitions, reported in **2018-2-L.W. (Crl.) 606 in Crl.O.P. (MD)No. 1356 of 2018, dated 20.09.2018** in the



case of ***Jeevanandham and others Vs. State rep. by the Inspector of Police,***

Karur District, wherein this Court held in Paragraph-25, as follows :-

"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 6 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*



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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



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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 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.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public



Crl.O.P.(MD) No.1364 of 2023

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servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.

13. He also relied upon the similar facts of the case covered under the judgment of this Court in the case of ***Raja Vs. State reported in (2019) 4 MLJ (Crl) 175.***

14. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143, 188 and 285 of 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.



Crl.O.P.(MD) No.1364 of 2023

15. Accordingly, the proceedings in STC No. 423 of 2016 on the file of the learned Judicial Magistrate No.I, Sivagangai is quashed insofar as the petitioner alone and the Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

27.01.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
PNM

To

1.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.(Crime No.267 of 2016).

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



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A.D.JAGADISH CHANDIRA, J.

PNM

ORDER IN
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