



Crl.O.P(MD)No.2181 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.2181 of 2021

and

Crl.M.P(MD)No.1071 of 2021

Kannathal

.. Petitioner/Accused No.1

Vs.

The State represented by,
The Inspector of Police,
Devakottai Taluk Police Station,
Sivagangai District.
(Crime No.50 of 2017)

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.50 of 2017 on the file of the respondent police and quash the same as against this petitioner.



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For Petitioner : Mr.M.Murugesan
For Respondent : Mr.M.Muthumanikkam
Government Advocate(Criminal Side)

ORDER

This Criminal Original Petition is filed to quash the FIR in Crime No.50 of 2017 pending on the file of the respondent police, wherein the petitioner is said to have committed offence punishable under Sections 143 and 188 IPC.

2. The case of the prosecution is that on 13.03.2017, at about 10.30 a.m, the petitioner along with others alleged to staged a demonstration in front of the Ration Shop by demanding to distribute goods in a fair manner through Government Ration Shop under the Public Distribution System scheme. The said demonstration have been taken place without any permission and thereafter, a case has been registered against the petitioner and other accused persons.



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3. The learned counsel for the petitioner would submit that the petitioner along with some other people is said to have unlawfully conducted the demonstration without getting any permission and therefore, by virtue of Section 195(1) of the Criminal Procedure Code, no Court can take cognizance of the offence punishable under Sections 172 to 188 of IPC, except on the complaint given by the public servant concerned. Hence, the defacto complainant has no *locus standi* or competence to register the FIR for the offence under Section 188 of IPC though the petitioner and others unlawfully conducted a demonstration in front of the Ration Shop as per the prosecution case. Therefore, the entire proceedings as against the petitioner is liable to be quashed.

4. The learned Government Advocate (criminal side) appearing for the respondent would submit that the petitioner and others, unlawfully conducted the demonstration in front of the Ration Shop. Therefore, they committed the offence under Sections 143 & 188 IPC.

5. Heard the respective counsels.



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6. This Court has carefully considered the rival submissions made on either side.

7. The only question for consideration is that whether the registration of case under Sections 143 & 188 IPC, on the complaint lodged by the respondent is permissible under law or not. In this regard it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973 :-

“195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Court 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;...”



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8. From the above provision, it is very clear that for taking cognizance of the offence under Section 188 of IPC, the public servant or his authorised agent only should lodge the complaint in writing, otherwise the law enforcing authority has no jurisdiction to register the case and consequently, the concerned Court below has no jurisdiction to take the cognizance on the basis of the final report filed by the law enforcing authority. So, the law laid down by this Court in similar circumstances in the case of ***Jeevanandham and Ors. Vs. State and Ors. reported in 2018 (2) LW (CRL) 606*** and ***Raja Vs. State and Ors. reported in 2019 (4) MLJ (CRL) 175***, is applicable to the present case also. Further, in the final report, the investigation agency has not filed any material to show the existence of the valid promulgation order.

9. In this case, the First Information Report has been registered by the respondent police for the offences under Sections 143 and 188 IPC without jurisdiction and applying the above principle, the registration of the case itself is illegal. In the FIR, it is not even stated as to how the



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demonstration conducted by the petitioner and others is treated as unlawful assembly and hence, it does not satisfy the requirements of Section 143 of IPC. Therefore, the registration of the First Information Report in Crime No.50 of 2017 cannot be sustained and it is liable to be quashed.

10. Accordingly, the FIR in Crime No.50 of 2017 on the file of the respondent police is quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

13.04.2023

NCC : Yes/No
Internet: Yes/No
Index : Yes/No
PJJL

To
1.The Inspector of Police,
Devakottai Taluk Police Station,
Sivagangai District.

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

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K.K.RAMAKRISHNAN,J.

PJL

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