



Crl.O.P.(MD)No.4870 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.4870 of 2020
and
Crl.M.P.(MD)No.2808 of 2020

1.M.Habibulla

2.K.Sulaiman

3.M.Asan Batcha

4.S.Abdul Rehuman

... Petitioners

Vs.

1.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
(Crime No.25 of 2018)

2.Sridharan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to charge sheet in S.T.C.No.3969 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same as against the petitioners as illegal and abuse of process of law.



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For Petitioners : Mr.S.M.A.Jinnah
For R1 : Mr.M.Sakthi Kumar,
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in S.T.C.No.3969 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same as against the petitioners.

2.According to the petitioners, the respondent police registered FIR in Cr.No.25 of 2018 for the offences under Sections 188, 153A(1)(a) IPC as against the petitioners. Thereafter, they filed charge sheet and the learned Magistrate has also taken cognizance in STC.No.3969 of 2019 and the same is pending. According to the case of the prosecution, on 16.01.2018, at about 18.00 hours, the defacto complainant, who is the second respondent herein working as Sub Inspector of Police attached to the first respondent police station, submitted a special report before the



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first respondent by stating that while he was being in the protection duty with other police officers at Munichalai Road, Obulapadithurai Madurai Town, at that time, all the petitioners were tried to staged a demonstration by “Tamilnadu Thouhid Jamath” condemning BJP national secretary H.Raja for his controversial comment against prophet Mohamed. During protest sloganeers incendiary chanted that “Hindu Terrorist H.Raja” and “Immigrant Dog” rend the air at a protest. Therefore, FIR has been registered in Cr.No.25 of 2018 for the offence under Sections 188, 153A(1)(a) IPC on 16.01.2018 and thereafter, filed final report and the same was taken on file in STC.No.3969 of 2019 by the Judicial Magistrate No.I, Madurai.

3.No counter was filed by the respondent.

4.The learned counsel appearing for the petitioners would contend that the second respondent filed a false complaint as against the petitioners and the same was registered in Cr.No.25 of 2018 for the offence under Sections 188, 153A(1)(a) IPC. As far as Section 188 IPC is concerned, there is a bar to take cognizance under Section 195 Cr.P.C.,



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and further, there was no order of promulgation by the concerned authority and thereby, disobedience of order would not arise. Hence, Section 188 IPC would not arise. He would further contend that as far as Section 153(A)(1)(a) IPC is concerned, previous sanction has to be obtained from the concerned authority, but in this case, no sanction was obtained and hence, charge sheet in STC.No.3969 of 2019 is liable to be quashed.

5.The learned Government Advocate(Crl.side)appearing for the first respondent would contend that the petitioners tried to stage a demonstration contemning BJP national secretary H.Raja for his controversial comment as against prophet Mohamed. During protest sloganeers incendiary chanted that “Hindu Terrorist H.Raja” and “Immigrant Dog” rend the air at a protest. Hence, FIR was registered and after elaborate investigation, the first respondent filed final report and the same was also taken cognizance by the learned Magistrate in STC.No.3969 of 2019. However, he would fairly admit that no promulgation order was passed by the competent authority and no previous sanction was obtained from the concerned authority.



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6.Heard both sides and perused the materials available in the records.

7.According to the petitioners, the first respondent police registered a case for the offences under Sections 188 and 153A(1)(a) IPC and no order was promulgated at the date of alleged occurrence and no previous sanction was obtained. In this context, it is relevant to extract 195 Cr.P.C.:-

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;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860),



namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the



purposes of this section (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed

Therefore, on bare perusal of the above provision it is clear that for the offence committed under Section 188 IPC, the public servant concerned has to give complaint in writing. Admittedly, in this case, the complaint was given by the Sub Inspector of Police and thereby, bar under Section 195(1) would not attract. However, as per Section 188 IPC, 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 his management, disobeys such direction. But, in this case, it is admitted fact that no order was promulgated in the place of occurrence by a public servant lawfully empowered to promulgate such order on the date of occurrence and thereby, Section 188 IPC would not attract in this case.

8. Another contention raised by the learned counsel appearing for the petitioners is that under Section 153A(1)(a) IPC, previous sanction is essential, as per Section 196 Cr.P.C., It is relevant to extract Section 196 Cr.P.C.:-

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence

(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, section 295A or subsection (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government



(1A) No Court shall take cognizance of —

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary

(3) The Central Government or the State Government may, before according sanction under subsection (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer



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not being below the rank of Inspector, in which case such police officer shall have the powers referred to in subsection (3) of section 155.

9.On careful reading of Section 196 Cr.P.C., to take cognizance of the offence under Section 153A, previous sanction from the Government is essential. But in this case, no previous sanction was obtained from the Government and thereby, cognizance taken by the learned Magistrate for the offences under Sections 188 and 153A(1)(a) IPC is not in accordance with law. Hence, the charge sheet in STC.No.3969 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai is liable to be quashed and accordingly, the same is quashed.

10.In the result, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

02.08.2023

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

- 1.The Judicial Magistrate No.I,
Madurai.
- 2.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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