



Crl.O.P.(MD) No.5903 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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- 1.Jeganathan
- 2.Rajamani
- 3.Subramani
- 4.Nallasamy
- 5.Nallasamy
- 6.Appukutti
- 7.Palanisamy
- 8.Pathumalai
- 9.Kittusamy
- 10.Arumugam
- 11.Nathachimuthu
- 12.Ramasamy
- 13.Palanisamy
- 14.Ponnusamy
- 15.Rani
- 16.Dhanalakshmi

...Petitioners/A1 to A16

Vs.

The State by
The Inspector of Police,
Thennilai Police Station,
Karur District,
(Crime No.147/2017)

... Respondent



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PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the charge sheet in S.T.C.No. 41 of 2019 on the file of the learned Judicial Magistrate, Aravakurichi, Karur District and quash the same.

For Petitioners : Mr.M.Palani Raja

For Respondent : Mr.R.Meenakshi Sundaram
Addl. Public Prosecutor

ORDER

This quash petition challenges the charge sheet in STC No.41 of 2019 on the file of the Judicial Magistrate, Aravakurichi, Karur District filed for the offences under Sections 143 and 188 IPC.

2. It is the case of the prosecution that the accused in order to protest against the price rise of 'Sugar', assembled and formed an unlawful assembly and caused breach of peace, in violation of the orders passed by the Superintendent of Police, Karur.



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3.The learned counsel for the petitioners submitted that the respondent police have no jurisdiction to file a final report under Section 188 of IPC. Section 195 Cr.P.C states that no court shall take cognizance of any offence punishable under Sections 172 to 188 IPC except on the complaint in writing of the public servant. In the instant case, there is no complaint by the public servant. The learned counsel further submitted that there are no allegations to constitute the offence of unlawful assembly. None of the ingredients of Section 141 IPC is made out. The learned counsel relied upon an order of this Court made in Crl.O.P(MD)No.19749 of 2018 dated 01.11.2018, wherein, this Court had quashed a similar final report filed under Sections 143 and 188 IPC.

4. The learned Additional Public Prosecutor submitted that the ingredients of the offence of unlawful assembly is made out as the petitioners had violated the order passed by the Superintendent of Police, Karur and formed an unlawful assembly. The learned Additional Public Prosecutor further submitted that the impugned final report does not suffer from any infirmity.



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5. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor.

6. A reading of the final report would show that the petitioners had joined together to protest against the price rise of “Sugar” announced by the State Government. Though it is stated in the final report that the petitioners had violated an order passed by the Superintendent of Police, Karur, the Superintendent of Police, Karur has not filed any complaint as mandated under Section 195 Cr.P.C for the alleged offence under Section 188 IPC. The statute mandates that no court shall take cognizance for the offence under Sections 172 to 188 IPC except on the complaint given by the public servant. Under Section 188 IPC, the public servant concerned is the public servant who promulgated the order which has been violated. This Court and the Hon'ble Supreme Court have repeatedly held that the cognizance based on the investigation otherwise than as the complaint of the public servant is illegal and unsustainable in law. Hence, cognizance taken for the offence under Section 188 IPC in the instant case is bad in law.



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7. As regards the offence under Section 143 IPC, we find that a peaceful protest made by the petitioners by joining together is sought to be projected as unlawful assembly. None of the ingredients necessary to designate an assembly as an unlawful assembly as provided in Section 141 IPC has been alleged by the respondent. Hence, Section 143 IPC is also not made out.

8. This Court in similar circumstances, had quashed the final report and held as follows:-

“8. 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;



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(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;...”

9. In view of the above, 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.

10. The learned counsel for the petitioners relied upon the judgement in **Mahaboob Basha Vs. Sambanda Reddiar and others** reported in **1994(1) Crimes, Page 477**. In the above judgment cited by the learned counsel for the petitioners in a batch of quash petitions, this Court has 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 of the offences falling under Sections 172 to 188 of IPC.



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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 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;



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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 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



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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 Sections 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 of the various zones are directed to immediately formulate a process by specifically empowering public 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.

11. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143 and 188 IPC. He is not a competent person to register an FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be



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*quashed for the offences under Section 188 of IPC.
Further, the complaint does not even state as to how the
dharna formed by the person is an unlawful dharna 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.”*

9. Therefore, for the aforesaid reasons, the impugned charge sheet in STC No.41 of 2018 on the file of the Judicial Magistrate, Aravakurichi, Karur District is quashed and the Criminal Original Petition is allowed.

05.01.2023

skn

NCC:Yes/No

Internet:Yes/No

Index:Yes/No

To

1.The Judicial Magistrate, Aravakurichi,
Karur District.

2.The Inspector of Police,
Thennilai Police Station,
Karur District,

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

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SUNDER MOHAN, J.

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