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CrI.O.P.(MD)No.22702 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2023

Delivered on : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.22702 of 2022

and

CrI.M.P.(MD)No.16060 of 2022

Manikandan

... Petitioner/
Accused No.14

vs.

The State represented by
The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
(Crime No.1425 of 2020)

... Respondent/
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records and quash the proceedings of the impugned FIR in Crime No.1425 of 2020 on the file of respondent dated 15.09.2020 as against the petitioner.

For Petitioner : Mr.S.Veluchamy

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the impugned FIR in Crime No.1425 of 2020 on the file of the respondent police and quash the same in so far as the petitioner is concerned.

2. The petitioner is the 14th accused in a case registered in Crime No.1425 of 2020 on the file of Keelavalavu Police Station, Madurai District.

3. The Sub Inspector of Police attached to Keelavalavu Police Station has registered a case in Crime No.1425 of 2020 on 15.09.2020 for the alleged offences under Sections 143 and 188 IPC against 28 named persons and some other persons belonging to Keelavalavu, Vachampatty Village.

4. The case of the prosecution is that on 15.09.2020 at about 17.00 hours, when the Sub Inspector of Police, Keelavalavu Police Station along with his police team was on surveillance to prevent the crimes, on



receipt of secret information, had proceeded to Keelavalavu Eriyur Road Junction in Tiruppathur to Melur Road, the petitioner and other had assembled unlawfully and staged a road-roko blocking the road between Tiruppathur to Melur Main Road protesting the respondent police in taking one Ramesh for enquiry with regard to history sheet rowdy file and that since the agitation was conducted without any permission from the concerned authorities, FIR came to be lodged.

5. The learned counsel appearing for the petitioner would submit that the petitioner was not at all present in the occurrence place at that time, that though the petitioner had explained his situation to the respondent police, they have registered a case falsely implicating him for statistics purposes, that the petitioner has not violated any Government Rules, that the police officer, who registered the case, has been conducting investigation which is very much against law and that therefore, the petitioner was constrained to file the above application invoking Section 482 Cr.P.C.

6. The learned counsel appearing for the petitioner would further submit that the police has no right to file the case under Section 188 IPC without getting prior permission from the jurisdictional Magistrate and



that there is a clear bar for taking cognizance of an offence under Section 188 IPC, without a complaint, as contemplated under Section 195 Cr.P.C.

7. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in ***C. Muniappan & Ors vs State Of Tamil Nadu*** in ***CRIMINAL APPEAL Nos. 127-130 of 2008***, dated 30.08.2010 and the relevant passages are extracted hereunder:

“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of



certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC.”

8. It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 IPC, except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively



subordinate. A learned Single Judge of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 IPC, and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173 Cr.P.C.

9. Considering the above, the position of law is well settled that there must be a complaint by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings *void ab initio* and as such, the final report filed for the offence under Section 188 IPC, has to be quashed.

10. Now turning to the Section 143 IPC, it is necessary to refer the following passage in ***Jeevanandham's case*** cited supra.

“32.....

2.In all the cases, the assembly of persons were expressing dissatisfaction on the governance and



claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

11. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

12. The learned counsel appearing for the petitioner would submit that since the police had taken a resident of that village to the police station without informing the purpose, the accused persons and other residents of that village were constrained to raise their protest, that they have conducted their agitation in a democratic way, that there was no untoward incident at that time and that therefore, the above protest would not constitute an offence under Section 143 IPC.



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13. As rightly contended by the learned counsel appearing for the petitioner, it is not the case of the prosecution that they have taken the said Ramesh in connection with a case registered against him or that they have taken the said person by executing the warrant pending against him. But they have canvassed a reason that he was taken to the police station to conduct an enquiry with regard to history sheet rowdy file, but they have not elaborated anything further.

14. In the above circumstances, as rightly contended by the learned counsel appearing for the petitioner, the prosecution does not state as to how the demonstration or the protest conducted by the accused is an unlawful protest and hence, this Court has no hesitation to say that the case of the prosecution does not satisfy the requirements of Section 143 IPC.

15. Considering the above, this Court has no other option, but to say that the impugned FIR in Crime No.1425 of 2020 on the file of the respondent police is liable to be quashed as against the petitioner.

16. In the result, this Criminal Original Petition is allowed and the impugned FIR in Crime No.1425 of 2020 on the file of the respondent



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police is quashed as against the petitioner. Consequently, connected
Miscellaneous Petition is closed.

05.04.2023

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

- 1.The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl.O.P.(MD)No.22702 of 2022
and
Crl.M.P.(MD)No.16060 of 2022

Dated : 05.04.2023