



Crl.O.P.(MD)No.21944 of 2022

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Reserved on : 08.02.2023

Delivered on : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.21944 of 2022

and

Crl.M.P.(MD)No.15466 of 2022

1.Veerar Abdullah

2.Kanava Beer

3.Raja Mohamed

4.Immathiyash Habef

5.Alavudeen

... Petitioners/
Accused 1 to 5

vs.

1.State represented through
The Inspector of Police,
Batlagundu Police Station,
Dindigul District.
(Crime No.145 of 2018)

... Respondent/
Complainant

2.R.Mahalakshmi
Sub Inspector of Police,
Batlagundu Police Station,
Dindigul District.

... Respondent/
Defacto
Complainant



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PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records of impugned Charge Sheet in C.C.No.65 of 2019 on the file of the learned Judicial Magistrate, Nilakottai and quash the same as illegal as against the petitioners.

For Petitioners : Mr.A.Mohamed Riyaz

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No.65 of 2019 pending on the file of the Court of the Judicial Magistrate, Nilakottai and quash the same.

2. The petitioners are the accused 1 to 5 in C.C.No.65 of 2019 pending on the file of the Court of the Judicial Magistrate, Nilakottai.

3. The case of the prosecution is that on 20.03.2018 at about 13.00 hours, when the Sub Inspector of Police attached to Batlagundu Police Station was on patrolling duty with her party, the petitioners belonging to



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SDPI party and Tamil Nadu Muslim Munnetra Kazhagam assembled unlawfully near Batlagundu Kaliyamman Temple, while 30(2) of the Police Act was in force and conducted a road-roko protest by demanding to release their party leaders, who had participated in a protest to prevent the Rama Rajya Ratha Yatra of Viswa Hindu Parishad, that thereby they had caused disturbance to the general public and refused to obey the order of disperse and that therefore the petitioners were secured and a case came to be registered in Crime No.145 of 2018 for the offences under Sections 143 and 188 IPC against the petitioners on 20.03.2018.

4. The respondent police, after completing the investigation has laid the final report on 20.03.2018 against the petitioners for the offences under Sections 143 and 188 IPC and the same was taken on file in C.C.No.65 of 2019 on the file of the learned Judicial Magistrate, Nilakottai.

5. The learned counsel appearing for the petitioners would contend 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.



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6. 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



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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.”

7. 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



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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.

8. 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.

9. Regarding the offence under Section 143 IPC, it is necessary to refer the following passage in *Jeevanandham's case*, above referred,

“32.....

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



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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.”

10. 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.

11. In the case on hand, admittedly, it is not the case of the prosecution that the petitioners had indulged in any act of violence and that the petitioners had assembled to raise their protest for arresting their leader, in a peaceful manner. As rightly contended by the learned counsel appearing for the petitioners, the prosecution does not even state as to how the protest/agitation conducted by the petitioners is unlawful and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of Section 143 IPC.



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12. Considering the above, this Court concludes that the impugned proceedings in C.C.No.65 of 2019 are liable to be quashed.

13. In the result, this Criminal Original Petition is allowed and the impugned proceedings in C.C.No.65 of 2019 pending on the file of the Judicial Magistrate, Nilakottai are quashed. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
csm

To

- 1.The Judicial Magistrate,
Nilakottai.
- 2.The Inspector of Police,
Batlagundu Police Station,
Dindigul District.
- 3.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.21944 of 2022
and
Crl.M.P.(MD)No.15466 of 2022

Dated : 26.04.2023