



Crl.O.P.(MD)No.13015 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.10.2024

PRONOUNCED ON : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13015 of 2024

and

Crl.M.P.(MD)Nos.8009 and 8010 of 2024

- 1.Maruthupandi
 - 2.Vishal
 - 3.Veeramani @ Veeradhavamani
 - 4.Veeramani
 - 5.Muniyandi
 - 6.Gowsik @ Kowshik
 - 7.Thangapandi
 - 8.Pavithran @ Pavithiran
 - 9.Vembadiyan @ Raja
 - 10.Muniraj @ Muniraja
 - 11.Tamilan @ Thirutamildevanayagam
 - 12.Sathish @ Mayee
 - 13.Prem @ Premselvam
- ... Petitioners/Accused Nos.1 to 13

Vs.

State through

- 1.The Inspector of Police,
Elumalai Police Station,
In Crime NO.196/2023,
Madurai District.

... 1st Respondent/Complainant



Crl.O.P.(MD)No.13015 of 2024

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2.The Sub-Inspector of Police,
Elumalai Police Station,
Madurai District.

...2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition has been filed under Section 528 of BNSS seeking to call for the records relating to the charge sheet in S.T.C.No.51/2024, on the file of the Judicial Magistrate No.II, Usilampatti and quash the same as against the petitioners/Accused Nos.1 to 13 is concerned.

For Petitioners : Mr.P.Praveen Kumar

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

ORDER

The Criminal Original Petition has been filed invoking Section 528 of BNSS to call for the records in S.T.C.No.51 of 2024, pending on the file of the Court of Judicial Magistrate No.II, Usilampatti and quash the same as against the petitioners.



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

2. The case of the prosecution is that on 19.09.2023 at about 17.00 hours, when the accused including the petitioners, to take part in the Vinayagar Idol procession, they had taken Vinayagar Idol in the tractor bearing Registration No.TN-58-BY-0669 and having 5 big speakers in another tractor bearing Registration No.TN-67-C-5412, by violating the directions of the police department had played songs loudly and danced in an obscene manner under the influence of alcohol, that without proceeding along with the procession route, they had stopped their vehicles near Mosque and played songs communally and caused disturbance to the public and police officials and that they have stopped their vehicles in front of the Government Higher Secondary School and played songs loudly and tried to attack with each other and when the same was questioned, they had abused the police officials.

3. The second respondent who was at the occurrence place along with the Special Sub-Inspector of Police and police officials has registered a case in Cr.No.186 of 2023 against 14 persons including the petitioners for the alleged offence under Sections 143, 341 and 188 I.P.C. After the completing the investigation, charge sheet came to be filed and the case was taken on file in



Crl.O.P.(MD)No.13015 of 2024

S.T.C.No.51 of 2024, pending on the file of the Judicial Magistrate No.II, Usilampatti.

4. The petitioners are the accused 1 to 13 in S.T.C.NO.51 of 2024, pending on the file of the Judicial Magistrate No.II, Usilampatti. It is not in dispute that one Harivignesh - 9th accused in the F.I.R., has filed a petition in Crl.O.P. (MD)No.17914 of 2023 for quashing the F.I.R., in Cr.No.196 of 2023 and a learned Judge of this Court vide order dated 09.10.2023 has allowed the petition and thereby quashed the F.I.R., as against the said petitioner.

5. The case of the petitioners is that they did not involve in any crime as alleged by the second respondent, that they are graduates and some of the petitioners are mostly qualified to serve in the Army or Police service, that there are no specific overt act attributed against the petitioners and that since the petitioners have never committed any offence as alleged, they are constrained to file the above petition invoking Section 528 of BNSS.

6. The learned Counsel for the petitioners would submit that in a similar case filed for the offences under Sections 143, 341 and 188 I.P.C., in ***Jeeva Raja***



Crl.O.P.(MD)No.13015 of 2024

Vs. State represented by the Special Sub-Inspector of Police reported in 2023 1

LW.(Crl.) 610, this Court has held that the offences are not made out and the relevant portions are extracted hereunder:

“5. The learned counsel for the petitioner would submit 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.

6. This Court in Vijay Vs. State represented by the Inspector of Police, Panagudi Police Station, Tirunelveli District in (Crl.OP(MD) Nos.8680 and 8681 of 2019; dated 02.02.2022), has dealt with the same issue and came to the decision that the complaint must be given by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and the relevant passages are extracted hereunder :

*“ 14.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



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

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



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

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.”

*15.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.*

16.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.”



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

7. The above decision is squarely applicable to the case on hand and on applying the same, this Court has no hesitation to hold that the respondent police cannot register the case for an offence under Section 188 IPC and the same is liable to be quashed.

8. Regarding Section 143 IPC, the learned counsel for the petitioner has relied on the judgment of this Court in **Crl.O.P(MD) No.12612 of 2022 (Annadurai Vs.The Inspector of Police, South Gate Police Station, Madurai and another)**, dated 06.09.2022 and the relevant passage is extracted hereunder :

“9.In the case on hand, the First Information Report has been registered by the respondents / police for the offences also under Sections 143 and 188 IPC. He is not a competent person to register FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be quashed for the offences under Section 188 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioner and others is an unlawful protest 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. The learned counsel for the petitioner would submit that the protest by the party workers for bus fare hike is a democratic right and the same would not constitute an offence under Section 143 IPC.



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

10. As rightly contended by the learned counsel for the petitioner, the prosecution does not even state as to how the demonstration conducted by the party workers is an unlawful protest and as such, this Court has no hesitation to say that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

11. Now turning to the offence under Section 341 IPC, it is necessary to refer the following passage in **Jeevanandham and Others vs State, represented by the Inspector of Police**, reported in 2018(2) LW (Crl.,) 606.

“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 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. A reading of the Final Report also does not make out an offence under Section 341 Cr.P.C since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

12. The prosecution in order to invoke Section 341 I.P.C., has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the case on hand, as already pointed out, the party workers of CPI (Marxist) had assembled and conducted agitation protesting the bus fare hike in the State of Tamil Nadu and there is absolutely no material to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in Jeevanandham's case, that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the prosecution case does not make out any offence of the wrongful restraint.”

7. As rightly contended by the learned Counsel for the petitioners, as already pointed out, this Court in Crl.O.P.(MD)No.17914 of 2023, which was filed by one of the accused shown in the F.I.R., has held that the offences under Sections 143, 341 and 188 I.P.C., are not made out, that though they have caused some inconvenience to the public, but for that they ought to have proceeded under the Madras City Police Act and that therefore, the entire prosecution was held to be bad in law and quashed the F.I.R.



Crl.O.P.(MD)No.13015 of 2024

WEB COPY

8. The above observations are also squarely applicable to the case on hand.

Considering the above, this Court has no hesitation to hold that the impugned charge sheet in S.T.C.No.51 of 2024, pending on the file of the Judicial Magistrate No.II, Usilampatti is liable to be quashed.

9. In the result, the Criminal Original Petition is allowed and the charge sheet in S.T.C.No.51 of 2024, pending on the file of the Judicial Magistrate No.II, Usilampatti is quashed. Consequently, the connected Miscellaneous Petitions are closed.

19.10.2024

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

SSL

Note : Issue order copy on 19.10.2024.

To

- 1.The Inspector of Police,
Elumalai Police Station,
Madurai District.
- 2.The Sub-Inspector of Police,
Elumalai Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,



Crl.O.P.(MD)No.13015 of 2024

Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.13015 of 2024

K.MURALI SHANKAR, J.

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Pre-Delivery order made in

Crl.O.P.(MD)No.13015 of 2024

19.10.2024