

Crl. O.P. No. 8965 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No. 8965 of 2023

and

Crl. M.P. Nos. 5746 & 5748 of 2023

- 1.Krishnamoorthy
- 2.Karthik
- 3.Ravi
- 4.Baskar
- 5.Karthik

... Petitioners

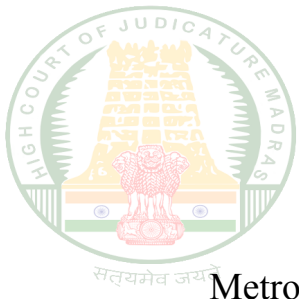
Vs.

- 1.State by
The Inspector of Police,
K-9, Thiru.Vi.Ka. Nagar Police Station,
I/C. K-5, Peravallur Police Station,
Peravallur, Chennai.
(Crime No. 217 of 2020)

- 2.Bharani,
Inspector of Police [Crime Branch]
K-5, Peravallur Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records connected with the impugned charge sheet in C.C.No.114 of 2022 on the file of the Court of the learned V



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Metropolitan Magistrate, Egmore, Chennai and quash the same.

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For Petitioners : Ms. L. Srileka

For Respondents : Mr.A.Gopinath,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceeding in C.C. No. 114 of 2022 pending on the file of the V Metropolitan Magistrate, Egmore, Chennai.

2. The case of the prosecution is that on 15.04.2020, the defacto complainant who is the Inspector of Police and another were in routine checkup during Covid-19 pandemic, a bike bearing Registration No.TN 05 T 4874 alleged to have come to the place of occurrence violating the order of prohibition under Section 144 Cr.P.C. As the said vehicle was seized, the first petitioner and other 2 persons involved in wordy quarrel. Consequently, the respondent police registered a suo motu FIR in Crime No.217 of 2020 for the offences punishable under Sections 188, 294(b), 353, 506(ii) IPC r/w Section 149 r/w Section 3 of the Epidemic Disease Act.



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3. The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have been falsely implicated in this case. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also right to freely express one's view are constitutionally protected fundamental rights under Part III of the Indian Constitution and their enjoyment can only be in reasonable manner and can be curtailed through a fair and non-arbitrary procedure as provided under Article 19 of the Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assembly that is so essential to a democracy. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate. Further he submitted that the petitioners or any other members had never been involved in any unlawful assembly and there is no evidence that the petitioners or others restrained anybody. Therefore, he sought for quashing the proceeding.



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4. Per contra, the learned Government Advocate (Crl.Side) would submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the respondents and perused the materials available on record.

6. On perusal of the charge, it is seen that during Covid-19 pandemic, the petitioners unlawfully assembled and involved in wordy quarrel. Therefore, the respondent police levelled the charges under Sections 186, 188, 294(b), 353, 506(ii) IPC r/w Section 149 r/w Section 3 of the Epidemic Disease Act as against the petitioners. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioners. It is also seen



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from the charge itself that the charges are very simple in nature and trivial. Section 188 of IPC reads as follows:

“188. Disobedience to order duly promulgated by public servant - 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, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

7. The only question for consideration is that whether the registration of case under Sections 186, 188, 294(b), 353, 506(ii) IPC r/w Section 149 r/w Section 3 of the Epidemic Disease Act registered 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 :-



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“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 Courts shall take cognizance-

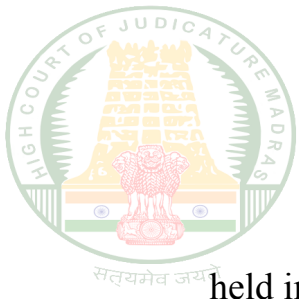
(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(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;...”

Therefore, it is very clear that for taking cognizance of the offences punishable 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.

8. The learned counsel for the petitioners relied upon a judgement in ***Mahaboob Basha Vs. Sambanda Reddiar and others*** reported in ***1994(1) Crimes, Page 477***. He also relied upon a judgment in a batch of quash petitions, reported in ***2018-2-L.W. (Crl.) 606*** in ***Crl.O.P. (MD)No. 1356 of 2018***, dated ***20.09.2018*** in the case of ***Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District***, and this Court



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held in Paragraph-25, as follows :-

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“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 Section 172 to 188 of IPC.

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 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



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to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 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 General 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”.



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9. It is also relevant to note the definition of Unlawful Assembly:

“According to Section 141 of the IPC, Unlawful Assembly means-

An assembly of five or more persons is designated an “Unlawful assembly”, if the common object of the persons composing that assembly is -

First - To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second - To resist the execution of any law, or of any legal process; or

Third - To commit any mischief or criminal trespass, or other offence; or

Fourth - By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.-



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Explanation – An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

10. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. In this case, the accused had neither shown any criminal force to commit any mischief, crime or offence nor by way of criminal force, tried to take possession of a tangible or intangible property or a corporeal or incorporeal right which is in possession and enjoyment of others.

11. In the case on hand, the First Information Report has been registered by the respondent police for the offences punishable under Sections 186, 188, 294(b), 353, 506(ii) IPC r/w Section 149 r/w Section 3 of the Epidemic Disease Act. She is not a competent person to register FIR for the offences punishable 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. Therefore, the final report cannot be sustained and is liable to be quashed.



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12. Accordingly, the proceeding in C.C.No.114 of 2022 on the file of the Court of the learned V Metropolitan Magistrate, Egmore, Chennai, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

14.03.2025

Index : Yes / No

Neutral citation : Yes / No

AT

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Inspector of Police [Crime Branch]
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3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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