IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 23044 of 2022
and Crl.M.P.Nos. 14759 & 14760 of 2022

1. Seeman
2. Anbu Thennarasu
3. Suthakar
4. Kajendran
5. Jaiveeran
6. Purushothaman
7. Rajesh Kumar
8. Jagajeevanram
9. Kannan
10. Mani
11. Vignesh
12. Chinnan
13. Anandan .... Petitioners

Vs

1. State by
Inspector of Police,
T4 Maduravoyal Police Station,
Chennai.
Crime No.1304 of 2020

2. N.Ravindran .... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the entire proceedings pending on the file of the Judicial Magistrate No.II at Poonamallee in C.C.No.16 of 2022 pending disposal of this petition.

For Petitioners : Mr.S.Xavier Felix

For R1 : Mr.S.Santhosh
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to call for the entire proceedings pending on the file of the Judicial Magistrate No.II at Poonamallee in C.C.No.16 of 2022 pending disposal of this petition.

2. The case of the prosecution is that on 16.08.2020 at about 11.30 p.m., the petitioners had assembled in front of the 1st petitioner's then residence at No.26, Ashtalakshmi Nagar, raised slogans condemning against the implementation of National Education Police 2020 by the Union Government, without getting prior permission from the concerned authority. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioners for the offences under Sections 143, 188 and 117 of IPC in C.C.No.16 of

2022, on the file the learned Judicial Magistrate No.II, Poonamallee.

3. The learned counsel appearing for the petitioner submitted that the petitioner is a social activist and has been raising voice for the public cause and public welfare, whenever injustice and inaction of the government machineries. In order to draw the attention of the Central and State Governments, the petitioners raised slogans condemning against the implementation of National Education Police 2020 by the Union Government. 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 once view or constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble 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, unless the public servant has written order from the authority. Further he

submitted that the petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. However, the officials of the respondent police had beaten the petitioner and others. When there was lot of members involved in the protest, the respondent police had registered this case, under Section 143, 188 and 117 of IPC as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Government Advocate (Criminal Side) submitted that the petitioners raised slogans condemning against the implementation of National Education Police 2020 by the Union Government and there are specific allegations as against the petitioners to proceed with the trial. Further, he 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. More over, the petitioners are habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed

for dismissal of the same.

5. Heard Mr.S.Xavier Felix, learned counsel for the petitioners and Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the first respondent.

6. On perusal of the charge, it is seen that the petitioners raised slogans condemning against the implementation of National Education Police 2020 by the Union Government, without getting prior permission from the concerned authority. Therefore the respondent police levelled the charges under Sections 143, 188 and 117 of I.P.C. 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 petitioner. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188 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 to tender 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 143, 188 and 117 of IPC, 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 :-

> *"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 hall 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 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 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 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;

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 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.

9. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143, 188 and 117 of 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 petitioners 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.

10. Accordingly, the proceedings in C.C.No.16 of 2022 on the

file of the learned Judicial Magistrate No.II, Poonamallee, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

23.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
Lpp

To
1. The Judicial Magistrate No.II,
Poonamallee, Chennai.

2. The Inspector of Police,
T4 Maduravoyal Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.
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