BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 06.09.2018	Delivered on 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

CRL.OP (MD).Nos.1356,14873,11834, 14785
15529,15644,15621,15866,16244, 16208,16075,
11836,14846,15645, 15655,12684,15709 and 15710 of 2018
and
Crl.MP(MD).Nos.582,583,5761, 5762 6963,6964,5374,5375,6559,6590,
6599, 6855,6856,6923, 6924, 6926, 6927, 6934,6928, 6961, 6962,5378,
5379, 7210, 7211, 7123, 7124, 7186,7179 and 7033 of 2018

Crl.O.P.No.1356 of 2018

1.Jeevanandham
2.Shanmugam
3.Anbarasan
4.Velu
5.Rajendran
6.M.Seenivasan
7.M.Dhanaraj
8.Ilayaraja
9.Devarj
10.K.Vinoth Raj @ Vinoth Kumar
11.S.Nagaraj
12.Selvam
13.C.Valtar
14.Rajasekaran
15.Ponnusamy
16.Parameswaran
17.R.Kumar
18.Kadhr Sherif
19.Palani

20.Velmurugan
21.Selvam
22.Manickavel
23.Saravanan
24.Kumasresan
25.Perumal
26.Saravanan
27.Perumal
28.Shanmugam
29.Gobi
30.Shanmugasundaram
31.Rajee
32.Pooranam
33.Elangovan
34.Prakasan
35.Ramasubbu
36.Kumaravel
37.Mathialagan
38.Eswaran
39.Sakthivel
40.Vetriselvan
41.Khadher Batcha
42.Periyasamy
43.Nadarajan
44.Chellammal
45.Chellammal
46.Chindhamani
47.Selvarani
48.Kuttiamma
49.Vedhambal
50.Chinnammal
51.Palaniammal
52.Vennilla
53.Susila
54.Lakshmi
55.Murugavalli
56.Krishnaveni
57.Santhosam
58.Pandeeswari
59.Karupayee
60.Poovathi
61.Selvi

62.Chellammal
63.Meera
64.Amaravathi
65.Nellambal
66.Amsavali
67.Sarna Begum
68.Samboornam
69.Vellayammal
70.Angammal
71.Pethai
72.Eswari
73.Vasandi
74.Padmani
75.Palaniammal
76.Pethayee
77.Geetha
78.Kamatchi
79.Manimegalai
80.Soliammal
81.Packiyam
82.Selvi
83.Angayee ... Petitioners
in Crl.O.P.No.1356/2018

.Vs.

1.State rep.by
Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(In Crime No.443 of 2016)

2.Mr.J.Cedric Manuel,
Inspector of Police,
Velayuthampalayam Police Station,
Karur District.

... Respondents
in Crl.O.P.No.1356/2018

Prayer in Crl.O.P.No.1356 of 2018:

Criminal Original Petition filed under Section 482 of Cr.P.C,1973, to call for the records in respect of the case in C.C.No.258 of 2017 on the file of the Court of the Judicial Magistrate No.II, Karur and to quash the same. In respect of the petitioners as illegal, violation of law.

For Petitioners in All Crl.OPs : Mr.M.Jothi Basu

For Respondents in All Crl.OPs : K.Suyambulinga Bharathi for R 1
Government Advocate
(Crl. Side)

COMMON ORDER

An important issue has arisen for consideration in these batch of cases. It is seen that a flurry of cases registered by the Police under Section 188 of Indian Penal Code [IPC], along with other offences becomes a subject matter of challenge before this Court on a daily basis. In spite of certain earlier decisions with regard to the manner in which an offence under Section 188 of IPC can be proceeded against certain persons who are alleged to have committed the said offence, and who has to file a complaint with regard to such an offence, has been spelt out in those decisions. Despite the same, the Police continue to register an FIR under Section 188 of IPC along with other

offences. Therefore, this Court thought it fit to discuss the law on the point in detail and give certain guidelines to be followed in future by the Police while dealing with an offence under Section 188 of IPC.

2.The provision under Section 188 of IPC is extracted hereunder:

> "***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".*
>
> *Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is*

sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Lord Macaulay's Report on this provision will be of some interest before proceeding to deal with the provision. The same is extracted hereunder.

"Thus it may happen that a religious procession which is in itself perfectly legal, and which, while it passes through many quarters of a town is perfectly harmless, cannot, without great risk of tumult and outrage, be suffered to turn down a particular street inhabited by persons, who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again, there are many Hindu rites which in Hindu temples and religious assemblies, the law tolerates, but which could not with propriety be exhibited in a place which English gentlemen and ladies were in the habit of frequenting, for purpose of exercise. Again, at a particular season, hydrophobia may be common among the dogs at a particular place, and it may be highly advisable that all the people at that place should keep their dogs strictly confined. Again, there may be a particular place in a town in which the people are in the habit of using as a receptacle for filth. In general, this practice may do no harm, but an unhealthy season may arrive when it may be dangerous to the health of the population, and under such circumstances it is evidently desirable that no person should be allowed to add to the

nuisance. It is evident, that it is utterly impossible for the legislature to mark out the route of all the religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs,, or when a particular dunghill may become dangerous to the health of a town. It is equally evident that ti would be unjust to punish a person who cannot be proved to have acted with bad intentions for doing today what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street, without giving him some notice.

What we propose, therefore, is to empower the local authorities to forbid acts which these authorities consider dangerous to the public tranquillity, health, safety, or convenience, and to make it an offence for a person to do anything which that person knows to be forbidden, and which may endanger the public tranquillity, health, safety, or convenience. It will be observed that we do not given the local authorities, the power of arbitrarily making any thing an offence. For unless, the Court before which the person who disobeys the order is tried shall be of opinion that he has done something tending to endanger the public tranquillity, health, safety, or convenience, he will not be liable to punishment. The effect of the order of the local authority will be merely to deprive the person who knowingly disobeys the order of the plea that he had

no bad intentions. He will not be permitted to allege that if he has caused harm, or risk of harm, it was without his knowledge.

Thus, if in a town where no order for the chaining up of dogs has been made, A suffers his dog to run about loose, A will be liable to no punishment for any mischief which the animal may do, unless it can be shown that A knew the animal to be dangerous. But if an order for confining dogs has been issued, and if A knew of that order, it will be no defense for him to allege, and even to prove, that be believed his dog to be perfectly harmless. If the Court think that A's disobedience has caused harm, or risk of harm, A will be liable to punishment. On the other hand if the Court think that there was no danger, and that the local order was a foolish one, A will not be liable to punishment."

3.When a public servant who is **lawfully empowered**, promulgates by an order to abstain from a certain act, or to take certain order with certain property in his possession or under his management, who ever disobeys such an order, the public servant can enforce his mandate or he can make over the person who disobeyed the order, to a Criminal Court to be dealt with under the Section.

4.To constitute an offence under Section 188 of IPC, mere disobedience of an order is not sufficient. The disobedience should also

lead to enumerated consequences, in the second or third limb of the Section to constitute it as an offence.

5.The words "public servant lawfully empowered to promulgate" in Section 188 IPC are significant. A person may be legally justified, though not lawfully empowered. For instance, a Police Inspector may stop the playing of music or speech made by some one, if he apprehends breach of peace, but he is not "lawfully empowered" to do so within the meaning of the Section, which is limited to specifically authorised acts. To put it simply the essential ingredients of this offence are ;

i)Promulgation of a legal order,
ii)its communication to the accused,
iii)its disobedience by him, and
iv)the injurious consequence as described in the section.

6.Promulgation of an order would mean "to make known by public declaration, to publish; to disseminate or to proclaim". The normal practice that is followed in our State is, by way of a publication in Gazette and by announcing the same in newspapers with wide circulation.

7.The next question that arises for consideration is, the manner in which the complaint can be registered in a case involving in Section 188 of IPC and when cognizance could be taken by a Magistrate for an offence under Section 188 of IPC. For this purpose, it will be beneficial to extract Section 195(1)(a)(i) of 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 Court 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) .....
> (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;

A plain reading of the provision clearly brings out the procedure. A complaint in writing from the public servant is essential for a Magistrate to take cognizance of an offence under Section 188 of IPC.

8.Mr.M.Karunanithi, learned counsel for the petitioners in some of the petitions, wherein, the Final Report has been challenged on the ground that the Magistrate cannot take cognizance, based on an FIR

registered by the Police, and a Final Report filed after investigation under Section 173(2) of Cr.P.C., made the following submissions.

- Section 195(1)(a)(i) mandates the filing of a complaint in writing by a public servant and the Police cannot register an FIR and investigate the case and thereafter file a Final Report, in cases where the alleged offence is under Section of 188 IPC.
- Section 2(d) of Cr.P.C defines a complaint as follows:
- (d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, **but does not include a police report**.
-
- Section 2(r) defines a Police Report as follows:

(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

By referring to the above two definitions, the learned counsel would

submit that Cr.P.C has consciously differentiated between a Complaint and a Police Report and he also emphasized that a complaint does not include a Police Report, even under the very definition itself. Therefore, the learned counsel would submit that the Final Report submitted by the Police and taken cognizance by the concerned Magistrate, is illegal and void *ab initio*.

- The learned counsel also brought to the notice of this Court Section 190 of Cr.P.C which is extracted here under.

> "**190. Cognizance of offences by Magistrates.**
>
> (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

By pointing out to the above provision, the learned counsel would submit that Section 195 of Cr.P.C is an exception to Section 190 of Cr.P.C. Section 190 of Cr.P.C provides for the various modes in which a

Magistrate can take cognizance of an offence. Section 195 of Cr.P.C carves out an exception and states that no Court shall take cognizance of certain offences, unless the stipulation under Section 195 of Cr.P.C is satisfied. Therefore, the learned counsel would submit that the present case is governed by Section 195 and not Section 190 of Cr.P.C.

9.Mr.Rajesh Saravanan, learned counsel, appearing for some of the petitioners, apart from adopting the submissions made by Mr.M.Karunanithi, also added one more important submission for consideration. In cases in which he is appearing, the cognizance taken by the learned Magistrate on a Final Report filed by the Police, apart from being challenged for violation of Section 195(1)(a), is also challenged on the ground that the complainant, the Investigating Officer and also the person who filed the Final Report, were all the same and therefore, the very Final Report itself, according to the learned counsel is vitiated and is liable to be set aside.

- The learned counsel brought to the notice of this Court the following judgments, to substantiate his arguments.

- a) ***Daulat Ram*** .Vs. ***State of Punjab*** reported in ***AIR 1962 SC 1206***.

- b) ***Saloni Arora*** .Vs. ***State (NCT of Delhi)*** reported in ***AIR 2017***

- ***SCC 391***

- c) ***Mohan Lal .Vs. The State of Punjab*** in ***Crl.A.No.1880 of 2011 by the Hon'ble Supreme Court***.

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10.Mr.Pandithurai, learned counsel appearing for some of the petitioners, apart from adopting the arguments made by the other counsel, also brought to the notice of this Court the following judgments.

- a) ***C.Muniappan and Others*** .Vs. ***State of Tamil Nadu*** reported in ***(2010) 9 SCC 567.***
- b) ***V.Palaniswamy .Vs. The Inspector of Police*** in ***Crl.OP.No. 13251 of 2009 dt.4.02.2015 (Madras High Court).***
- c) ***M.Balaji*** .Vs. ***The Principal Home Secretary, Government of Tamil Nadu, Secretariat, Chennai and Others in W.P.No. 17768 of 2017*** dt. 9.4.2018 (***Madras High Court).***

11.Mr.M.Jothi Basu, learned counsel appearing for some of the petitioners, apart from adopting the submissions made by other counsel also brought to the notice of this Court, the scope of Section 30(2) of the Police Act. The learned counsel would submit that the promulgation that is referred to under Section 188 IPC, is normally passed in all these cases, under Section 30(2) of the Police Act. The learned counsel after referring to the said provision would submit that the said power is only regulatory in nature and it is not a blanket power to trifle any democratic dissent of the citizens by the Police. Therefore, the learned

counsel would submit that the power under Section 30(2) of the Police Act can be exercised only within the ambit of the provisions of the Constitution, which gives a citizen, freedom of speech and expression with reasonable restrictions and the restrictions imposed under the promulgation must satisfy the test of reasonableness. The learned counsel brought to the notice of this Court the judgment in ***S.Veerakumar*** .Vs. ***Deputy Superintendent of Police, Gobi Sub Division, Gobichettipalayam, Erode District and Another*** reported in ***(2012) 5 MLJ 1039***.

12.Per contra, the learned Additional Public Prosecutor Mr.M.Chandrasekaran made the following submissions.

- Section 188 of IPC is a cognizable offence and therefore the Police is duty bound to register an FIR under Section 154 of Cr.P.C immediately on an information and proceed to investigate the case as provided under Section 156 and 157 of Cr.P.C and thereafter file a Final Report under Section 173(2) of Cr.P.C.
-
- The learned counsel would submit that such a Police Officer is also a public servant under Section 21 of IPC and therefore he is entitled to register an FIR, investigate the case and file a Final Report and such Final Report can be taken cognizance by the

Judicial Magistrate under Section 190 of Cr.P.C.

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● The learned counsel made further submission that Section 41 of Cr.P.C gives sufficient powers to a Police Officer to even arrest a person who commits, in the presence of a Police Officer, a congnizable offence. The learned counsel would further submit that the Police Officer, if he is satisfied, can cause such arrest if necessary in order to prevent such a person from committing any further offence. Therefore, the learned counsel would submit that the Police Officer cannot remain a mute spectator, when an offence under Section 188 IPC is committed, in his presence and he has to necessarily take action, since Section of 188 of IPC is a cognizable offence.

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● The learned counsel would further submit that only taking cognizance of an offence under Section 188 of IPC is a bar without a complaint as contemplated under Section 195(1)(a)(i) and that does not mean that the Police cannot register an FIR and investigate the case. The bar imposed under Section 195(1)(a)(i) cannot be expanded to such an extent.

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● The learned Additional Public Prosecutor further contended

that, even assuming Section 195(1)(a)(i) to be a bar for taking cognizance of an offence under Section 188 of IPC, when the case involves other offences, the proceedings cannot be quashed insofar as the other offences are concerned.

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● The learned Additional Public Prosecutor relied upon the following judgments.

a) ***S.K.Sinha, Chief Enforcement*** .Vs. ***Videocon International Ltd ., & Ors in Crl.A.No.175 of 2007 dated 25.1.2008, [Hon'ble Supreme Court of India].***

b) ***Bechar Vala .***Vs. ***State of Gujarat on 27.12.2002,[Gujarat High Court].***

c) ***G.S.R.Krishnamurthi*** .Vs. ***M.Govindaswamy, Income-Tax , on 13.6.1991 [Madras High Court]***

d) ***K.Muhammed Aslam .***Vs. ***State rep.by Public on 24.3.2010, [Kerala High Court]***.

e) ***V.Gowthaman & Others*** .Vs. ***State, rep.by its Inspector of Police, St.Thomas Mount Police Station, Chennai*** reported in ***2018 4 CTC 252.***

f) ***Mithun Mohan and Others*** .Vs. ***State & Others in Crl.M.C.No.5291 of 2014 on 6.6.2014, [Kerala High Court]***.

g) ***E.K.Palanisamy*** .Vs. ***The Deputy Superintendent of Police, Erode Town Sub-Division, Erode District in Crl.O.P.No.7699 of 2009 dt.18.08.2009, [Madras High Court]***.

13.This Court has carefully considered the submissions made by the learned counsel appearing for the respective parties.

14.This Court will deal with the various judgments cited by the Bar with respect to the scope of Section 195(1)(a)(i) of Cr.P.C qua Section 188 of IPC. Some of the judgments are cited, and the relevant paragraphs are extracted here under:

a) In ***Daulat Ram .Vs. State of Punjab*** reported in ***AIR 1962 SCC 1206***, the relevant paragraphs are extracted hereunder:

> *"3.....The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of s. 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.*
>
> *4.Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In*

making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that s. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was flied along with the charge sheet and it is stated that this satisfies the requirements of s. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section comtemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab inito and the conviction cannot be maintained".

● ***b) C.Muniappan and Others*** .Vs. ***State of Tamil Nadu*** reported

in ***(2010) 9 SCC 567.***

Charges under Section 188 IPC:

27. Section 195 Cr.PC reads as under :

"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 Court 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 .....

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

28. 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).

29. The test of whether there is evasion or non-compliance of Section 195 Cr.PC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. v. The State of West Bengal, AIR 1953 SC 293; andDurgacharan Naik & Ors v. State of Orissa, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other

sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

30. In M.S. Ahlawat v. State of Haryana & Anr., AIR 2000 SC 168, this Court considered the matter at length and held as under :

"....Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section." (Emphasis added)

31. In Sachida Nand Singh & Anr. v. State of Bihar & Anr., (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

"7. ..Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise." (Emphasis supplied)

32. In Daulat Ram v. State of Punjab, AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

"4...The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. 5.The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside." (Emphasis added)

33. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the pubic servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction".

c)***Saloni Arora .Vs. State of NCT of Delhi*** reported in ***AIR 2017 SCC 391.***

"6) In the aforementioned proceedings, the State Prosecuting Agency sought to prosecute the appellant for commission of an offence punishable under Section 182 IPC. The appellant, felt aggrieved of this action of the prosecuting agency, filed an application for her discharge on the ground that since no procedure as contemplated under Section 195 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") was followed by the prosecution, the appellant cannot be prosecuted for such offence.

10) As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of Daulat Ram vs. State of Punjab, (AIR 1962 SC 1206) that in order to prosecute an accused for an offence punishable under Section 182 IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void ab initio.

11) It is apposite to reproduce the law laid down by this Court in the case of Daulat Ram (supra) which reads as under:

"There is an absolute bar against the Court taking seisin of the case under S.182 I.P.C. except in the manner provided by S.195 Crl.P.C.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S.182 is complete when a person moves the public servant for action. Where a person

reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S.182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S.182 without the Tehsildar's complaint in writing is, therefore, without jurisdiction ab initio." (Emphasis supplied)

12) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (supra) quoted above".

d. Palaniswamy and Others .Vs. The Inspector of Police in Crl.O.P.No.13251 of 2009 dt. 04.02.2015.

"4.Heard the learned Additional Public Prosecutor appearing for the respondent and he also submitted that as per Section 195 of Cr.P.C., a complaint can be filed only by a public servant and

police cannot file a charge sheet for the offence punishable under Section 188 of I.P.C. and read with Section 195 of Cr.P.C. He further submitted that no Court shall take cognizance as stated therein except on a complaint given by a public servant concerned.

5.Admittedly, in this case, on the basis of the complaint given police enquired, investigated and filed charge sheet and therefore, the Court should not have taken cognizance of the charge sheet filed by the respondent police. In the decision reported in (2004) M.L.J. (Crl) 633 (K.C.Palanisamy and others Vs. State represented by Inspector of Police, City Crime Branch, (Coimbatore), the said law has been discussed and held that the final report filed by the police in respect of Section 188 of I.P.C. Is not maintainable. Hence, the lower court ought not to have taken cognizance of the charge sheet filed by the respondent police."

e. *M.Balaji* .Vs**. *The Pricnipal Home Secretary, Government of Tamil Nadu, Secretariat, Chennai & Others*** in ***W.P.No.17768 of 2017, dated 09.04.2018 [Madras High Court]***

"This writ petition, by way of public interest litigation, has been filed by a practising advocate of this Court seeking a writ of mandamus or an analogous order directing the respondents to ensure that no first information report or charge sheet or final report is registered under Sections 172 to 188 of the Indian Penal Code.

3. Under Section 195 of the Criminal Procedure Code, no Court is to take cognizance of an offence punishable under Section 172 to 188 of the Indian Penal Code or of any abetment of, or attempt to commit such offences punishable under those sections, or 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.

4. If any Court takes cognizance of an offence in breach of Section 195 of the Criminal Procedure Code, the accused has an efficacious alternative remedy of filing a criminal revisional application for quashing of proceedings.

12. We would request the Tamil Nadu State Judicial Academy to initiate appropriate training programmes for the Magistrates in relation to offences under Sections 172 to 188 of the Indian Penal Code.

f) ***V.Gowthaman & Others .Vs. State, rep.by its Inspector of Police, St.Thomas Mount Police Station Chennai*** reported in [***2018 (4) CTC 252].***

"14. Though the learned counsel for the accused had failed to argue a particular legal aspect which is favourable to him, this Court does not want to take advantage of his ignorance. A Court cannot take cognizance of an offence under Section 188 IPC on a police report filed under Section 173(2) Cr.P.C.,

but only on the complaint by a concerned public servant in the light of Section 195 Cr.P.C. (See: C.Muniappan and others vs. State of Tamil Nadu [(2010) 9 SCC 567]. Thus, the prosecution of the accused under Section 188 IPC stands quashed".

15.From the above judgments, it is clear that in order to prosecute an accused for an offence punishable under Section 188 of IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code, else, such action is rendered void *ab initio*. The object of the provision is to provide for a particular procedure, which gives authority only to the public servant. The legislative intent is to prevent an individual or a group of persons from facing criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will, or frivolity of disposition and to save the time of Criminal Courts from being vexed by endless prosecution. Section 195 of Cr.P.C is an expansion to the general rule contained under Section 190 of Cr.P.C, wherein, any person can set the law in motion by making a complaint.

16.Therefore, it is very clear from the above judgments that there must be a complaint by a public servant, who is lawfully empowered, whose lawful order has not been complied with. The provisions of Section 195 of Cr.P.C are mandatory and non-compliance, with it, will make the entire process void *ab initio*, being without jurisdiction.

17.The submission of the learned Additional Public Prosecutor to the effect that Section 188 of IPC is a cognizable offence, and therefore, the Police Officer is entitled to proceed under Section 154, 156 and 157 of Cr.P.C, is not sustainable. The offence being cognizable by itself, does not enable the Police Officer to register an FIR for an offence under Section 188 of IPC. The reason being, such registration of an FIR has to necessarily end with a Police Report under Section 173(2) of Cr.P.C, which is specifically barred under Section 195 of Cr.P.C. The definition of a complaint under Section 2(d) of Cr.P.C itself makes it clear that a complaint does not include a Police Report. The Hon'ble Supreme Court has gone to the extent of saying that such a Final Report, which is taken cognizance will make the entire proceedings void *ab initio* which would necessarily mean that the registration of the FIR for an offence under Section 188 of IPC will also become void.

18.There is one more analogy, which can be used here. Section 195(1)(b) of Cr.P.C prohibits any complaint for an offence that is committed during Court proceedings. Such offence committed during Court proceedings like forgery, impersonation, perjury etc., by itself may be cognizable in nature, but that does not empower the Police Officer to register an FIR and complaint in such cases can be given only by the

Court concerned. Therefore, the nature of the offence does not give a right to the Police Officer to register an FIR and investigate and file a Final Report, when those offences fall within the category enumerated under Section 195 of Cr.P.C. Therefore, the arguments of the learned Additional Public Prosecutor in this regard is not sustainable.

19.The next argument of the learned Additional Public Prosecutor to the effect that since a Police Officer is also a public servant under Section 21 of IPC, his Final Report filed before the Court under Section 173(2) of Cr.P.C must be construed as a complaint under Section 195(1)(a)(i), is also not sustainable. The word used under Section 188 of IPC is "public servant lawfully empowered" and the word used in Section 195(1)(a)(i) is "public servant concerned". The very terminology that has been used in the provision makes it clear that not all public servants falling under Section 21 of IPC can give a complaint in writing, it is only the public servant who has been specifically authorised, by a specific order in this regard, who can file a written complaint before the concerned Judicial Magistrate Court.

20.It is true that a Police Officer by virtue of the power given under Section 41 of Cr.P.C., will have the authority to arrest a person,

without any warrant or order from a Magistrate, when a cognizable offence is committed in his presence or in order to prevent the committing of a cognizable offence. This power by itself will not vest the Police Officer to register an FIR for an offence under Section 188 of IPC. After the arrest, the concerned Police Officer is duty bound to inform the public servant authorised about the offence committed under Section 188 of IPC and the public servant thereafter, has to proceed in accordance with the procedure under Section 195(1)(a)(i) of Cr.P.C. In other words, the power of the Police Officer to arrest a person committing a cognizable offence, is only a preventive action and thereafter the procedure to be followed is guided by Section 195(1)(a)(i) of Cr.P.C.

21.The last submission made by the learned Additional Public Prosecutor to the effect that, where other offences are also committed along with the offence under Section 188 of IPC, the authority of the Police Officer to register an FIR and to investigate and file a Final Report for the other offences, is in no way affected, is perfectly correct. The judgments cited by the learned Additional Public Prosecutor in this regard, supports the submission made by the learned Additional Public Prosecutor and this Court is in agreement with the said submission.

22.In some of the cases, it is also seen that the same Officer has registered the FIR, conducted the investigation and also filed the Final Report. Such a procedure goes against the very fundamental principle of fair investigation, wherein, the informant and the investigator must not be the same person. Such a procedure, in fact is violative of Article 21 of the Constitution.

23.It will be useful to refer to the latest judgment of Hon'ble Supreme Court in this regard in ***Mohan Lal .Vs. The State of Punjab, in Crl.A.No.1880 of 2011 dt.16.08.2018, Hon'ble Supreme Court of India.***

> *"5. We have considered the submissions on behalf of the parties. The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.*
>
> *11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the*

prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.

12. That investigation in a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on part of the accused was noticed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254 as follows:

> *"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the*

real unvarnished truth".

33. In State of Bihar v. P.P. Sharma this Court has held as under:

"57. … Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. … Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

** * **

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. …

61. An investigating officer who is not sensitive to the constitutional mandates, may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of

it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be

excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

26.Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

24.There are certain cases covered in this batch, which apart from the infraction of the procedural mandate under Section 195(1)(a)(i) of Cr.P.C is also vitiated by the fact that the informant and the investigator are the same persons and hence, hit by the latest judgment of the Hon'ble Supreme Court referred supra.

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.

This Court will now proceed to deal with the independent cases

26. Crl.O.P.(MD).Nos. 11834, 15529, 15644, 15621, 16244, 16208, 16075 of 2018

In all these cases, it is seen that a Final Report has been filed for an Offence under Section 188 and 143 of IPC and cognizance has also been taken by the concerned Judicial Magistrates. In view of the above discussion, the cognizance of the Final Report under Section 188 of IPC is liable to be quashed. Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so-called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees. Where as an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so-called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of IPC. In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum

rights that are guaranteed to a 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.

2.Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed. Accordingly, all the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed.

27. Crl.O.P.(MD)Nos.1356,14873,14785 and 15866 of 2018

In all these cases, it is seen that a Final Report has been filed for an Offence under Section 188 and 143 of IPC and cognizance has also been taken by the concerned Judicial Magistrates. In view of the above discussion, the cognizance of the Final Report under Section 188 of IPC is liable to be quashed. Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees. Where as an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of IPC. In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum

rights that are guaranteed to a 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.

2.In these cases, the informant and the investigator are one and the same person. Therefore, there was no fair investigation in these cases. This issue is covered by the judgment of the Hon'ble Supreme Court in ***Mohanlal*** .Vs. ***The State of Punjab*** in ***Crl.A.No.1880 of 2011*** referred supra. Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed. Accordingly, the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed.

28.Crl.O.P.(MD)No.11836 of 2018:-

In this case, the Final Report has been filed only for an offence under Section 143 of Cr.P.C and the Court below has taken cognizance of the Final Report. A reading of the allegations made in the Final Report would show that a group of persons were agitating for non supply of the essential commodities in a ration shop. In this case, the FIR was registered under Section 143 and 188 of IPC. The Final Report was filed for an offence under Section 143 of IPC. Insofar as the offence under Section 143 of IPC is concerned, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so-called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees, where as an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so-called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence

under Section 143 of IPC. In this case, the assembly of persons were made to express dissatisfaction of 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.

2.In this case, the informant and the investigator are one and the same person. Therefore, there was no fair investigation in this case. This is covered by the judgment of the Hon'ble Supreme Court in ***Mohanlal*** .Vs. ***The State of Punjab*** in ***Crl.A.No.1880 of 2011*** referred supra. Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed. Accordingly, the Criminal Original petition is allowed, and the Final Report filed is hereby quashed.

29.Crl.O.P.(MD)No.14846 of 2018

In this case, an FIR has been registered by the respondent Police for an offence under Section 188 of IPC and Section 4(1) of the Tamil Nadu Open Places [Prevention of Disfigurement] Act, 1959. The respondent Police do not have the authority to register an FIR for an

offence under Section 188 of IPC. Therefore, the FIR has to be necessarily quashed insofar as offence under Section 188 of IPC is concerned. Insofar as 4(1) of the Tamil Nadu Open Places [Prevention of Disfigurement] Act, 1959 is concerned, the FIR is registered on the ground that the portrait of Swami Vivekananda was placed without permission. This offence is punishable with 3 months imprisonment and therefore, is a non cognizable offence. The respondent Police cannot register an FIR, without getting a specific order from the Magistrate under Section 155 of Cr.P.C. Therefore, the FIR is not sustainable. Accordingly, the FIR in Cr.No.4 of 2018 is hereby quashed and Crl.O.P.No.14846 of 2018 is allowed.

30.Crl.OP(MD)No.15645 of 2018

In this case, the FIR has been registered for an offence under Section 143, 188 and Section 336 of IPC. An FIR cannot be registered for an offence under Section 188 of IPC. The complaint does not even state as to how the assembly formed by the persons is a unlawful assembly and does not satisfy the requirements of Section 143 of IPC. There is also no mention about any promulgation order passed under Section 30(2) of the Police Act, 1861. There are absolutely no averments in order to attract the offence under Section 336 of IPC.

There is no allegation that the accused persons engaged in an act so as to endanger human life or the personal safety of others. The complaint only says that the accused persons endangered their own lives by trying to get into the sea**.** Therefore, the FIR insofar as the offence under Section 336 is concerned is also hereby quashed. Accordingly, the FIR in Crime No.112/18 is hereby quashed and Criminal Original Petition is allowed.

31.Crl.O.P.(MD)No.15655 of 2018

In this case, an FIR has been registered as against 102 persons for an offence under Section 341,143 and 188 of IPC. A reading of the FIR does not make out an offence under Section 341 and 143 of IPC. No FIR can be registered by the respondent Police for an offence under Section 188 of IPC. Accordingly, the FIR in Crime No.99 of 2018 is hereby quashed and Crl.O.P.No.15655/2018 stands allowed.

32.Crl.O.P.(MD)Nos. 12684, 15710 and 15709 of 2018

In all these cases, a Final Report has been filed for an offence under Section 143, 341 and 188 of IPC. A Final Report cannot be filed for an offence under Section 188 of IPC, and the Court below ought not to have been taken cognizance. In view of the above discussion, the

Final Report insofar as an offence under Section 188 IPC is concerned is hereby quashed. Insofar as the offence under Section 143 IPC is concerned, the allegation is that the assembly had raised slogans demanding for the rights of the farmers, and expressed opposition not to establish a godown and this according to the Police was done, when there was a prohibitory order under Section 30(2) of the Police Act, 1861. In the considered view of this Court, this will not constitute an offence under Section 143 of IPC.

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. A reading of the Final Report also does not make out an offence under Section 341 of 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.

3.In the considered view of this Court, the Final Report does not make out an offence of unlawful assembly or wrongful restraint. Accordingly, all the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed.

33.Consequently, connected Miscellaneous Petitions are closed.

34. This Court records its appreciation for the effective assistance given by the learned counsel appearing on behalf of the petitioners and also the learned Additional Public Prosecutor appearing for the State, to enable this Court to deal with an offence under Section 188 of IPC and give necessary guidelines with regard to the procedure to be followed.

20.09.2018

Internet: yes/No

Index: Yes/No

Speaking Order/Non Speaking Order

KP

To

1.Inspector of Police,
Velayuthampalayam Police Station,
Karur District.

2.Mr.J.Cedric Manuel,
Inspector of Police,
Velayuthampalayam Police Station,
Karur District.

3.The Judicial Magistrate No.II,
Karur.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

1.The Director General of Police,
Chennai.
2.The Inspector General of Police,
All Zones.

N. ANAND VENKATESH,. J

KP

Pre-Delivery Common Order in CRL.OP(MD).Nos.1356,14873,11834, 14785 15529,15644,15621,15866, 16244, 16208,16075,11836, 14846,15645, 15655,12684, 15709 and 15710 of 2018

20.09.2018