

HIGH COURT OF KARNATAKA AT BENGALURU

Before : Mrs. Justice K.S.Mudagal

SRI RAJASHEKHARANANDA SWAMIJI – Petitioner,

Versus

THE STATE OF KARNATAKA – respondent.

Writ Petition No.13328/2018

Criminal Procedure Code, 1973 (II of 1974), Section 195(1)(a) – Section 188 IPC was the main offence – Under Section 195(1)(a) for a court to take cognizance there should be a written complaint and such complaint should be filed either by the officer issuing such promulgation order or the officer above his rank – Prohibitory order under Section 144 of IPC was promulgated by the Commissioner of Police and not the complainant, a Police Inspector – Procedure under Section 195(1)(a) not followed – Therefore the first information report, charge sheet and the order taking cognizance on such charge sheet are without jurisdiction – If the offences form part of same transaction of the offences contemplated under Section 195(1) of Cr.P.C, then it is not possible to split up and hold that prosecution of the accused for the other offences should be upheld – Therefore the entire complaint, first information report, charge sheet and the order taking cognizance are liable to be quashed.

ORDER

K.S.Mudagal, J. – (18 June, 2021) – “Whether the proceedings, in C.C.No.3660/2016 on the file of Judicial Magistrate First Class (III Court), Mangalore, Dakshina Kannada against the petitioners are sustainable in law? Is the question involved in this case.

2. On the basis of the complaint (Annexure-B) filed by A.K.Rajesh, Police Inspector, Mangalore Rural Police registered the first information report in Crime No.428/2014 (Annexure-C) against the petitioners and others for the offences punishable under Sections 143, 144, 145, 147, 148, 153, 188, 332, 353 of IPC and Sections 2(a) and 2(b) of the Karnataka Prevention of Destruction and Loss of Property Act, 1981 ('KPDLP Act' for short).

3. On investigation, Mangalore Rural Police charge sheeted the petitioners and others for the offences punishable under Sections 143, 144, 145, 147, 148, 153, 188, 332, 353 of IPC and Sections 2(a) and 2(b) of the KPDLP Act. In the charge sheet the petitioners are shown as accused Nos.1 and 12.

4. The case of the prosecution in brief is as follows:

The Commissioner of Police, Mangalore city promulgated the prohibitory order from 6.00 a.m. to 6.00 p.m. of 08.12.2014 and prohibited assembling of five or more persons in Mangalore city. The accused persons violating such prohibitory order organized procession

consisting 2000 persons belonging to Hindu Organization. When the complainant and his colleagues tried to prevent the accused from proceeding with the procession advising that, that is likely to create communal tensions, the accused obstructed the police from discharging their duties, crashed the barricades erected at the scene of offence, damaged the police vehicles and caused injuries to CWs.5 to 8.

5. On receipt of charge sheet, the Magistrate by order dated 24.10.2016 took cognizance of the offences punishable under Sections 143, 144, 145, 147, 148, 153,. 188, 332, 353 of I PC and Sections 2(a) and 2(b) of the KPDL Act and summoned the accused to face trial for the said offences.

6. The petitioners seek quashing of Annexures-A to Annexures-D on the ground that the prime offence was under Section 188 of IPC and Section 195 of Cr.P.C. bars taking cognizance such offences, except upon the complaint as required under Section 200 of Cr.P.C, therefore the whole proceedings are without jurisdiction.

7. As rightly pointed out, Section 188 of IPC is the main offence. The other offences flow from that. Section 195(1)(a) of Cr.P.C. bars the Court to take cognisance of such offence unless in accordance with the procedure laid down therein. Section 195(1)(a) reads as follows:

“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, 1860 (45 of 1860); or

(ii) of any abetment of, or attempt to. commit, such offence; or

(iii) of any criminal conspiracy to commit offence,

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

8. Reading of the above provision makes it clear that to take cognizance there should be a written complaint and such complaint should be filed either by the officer issuing such promulgation order or the officer above his rank. In the case at hand, as per the complaint itself, prohibitory order under Section 144 of IPC was promulgated by the Commissioner of Police and not the complainant.

9. Further Section 2(d) of Cr.P.C. defines complaint as *allegations made orally or in writing to the Magistrate* with a view to the Magistrate taking action on such complaint under the Code. Only on such complaint, the Magistrate can take cognizance under Section 190(1)(a) of Cr.P.C. Thereafter the procedure prescribed under Section 200 of Cr.P.C. has to be followed. Therefore the first information report, charge sheet and the order taking

cognizance on such charge sheet are without jurisdiction.

10. Then the question is Annexures-A to D get vitiated only so far as the offence under Section 188 of IPC. In para 8 of the judgment in *State of Karnataka v. Hemareddy*(1981) 2 SCC 185, the Hon'ble Supreme Court held as follows:

"8. We agree with the view expressed by the learned Judge and hold that in cases *where in the course of the same transaction an offence* for which no complaint by a Court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, *it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld.*"(Emphasis supplied)

11. Reading of the above judgment makes it clear that if the offences form part of same transaction of the offences contemplated under Section 195(1) of Cr.P.C, then it is not possible to split up and hold that prosecution of the accused for the other offences should be upheld. Therefore the entire complaint, first information report, charge sheet and the order taking cognizance are liable to be quashed. The petition is allowed.

12. The impugned first information report, complaint, the charge sheet and the proceedings in C.C.No.3660/2016 are hereby quashed.