

THE HON'BLE SRI JUSTICE Dr B. SIVA SANKARA RAO

CRL.P.Nos.5488 & 7469 of 2015

COMMON ORDER:

The self same accused by name Bejjam Venu Gopal Reddy filed these two criminal petitions under Section 482 Cr.P.C. seeking to quash the proceedings in FIR No.80 of 2015 of Vinukonda P.S., Guntur district for the offence punishable under Sections 189, 507 and 501 IPC, which is outcome of report of the complainant-K.V. Mohan Rao, Superintendent of Police, (V&E), Guntur i.e., 2nd respondent in Crl.P.No.5488 of 2015 and the proceedings in F.I.R. No.122 of 2015 of Chilakurupet P.S., Guntur District for the offence punishable under Sections 501 and 507 IPC, which is outcome report of the complainant-Mannava Subbarao, Secretary of TDP i.e., 2nd respondent in Crl.P.No.7469 of 2015.

2 . Coming to quash petition in Crl.P.No.5488 of 2015 against the Crime No.80 of 2015, the averments of FIR in nutshell are that he is working as Superintendent of Police in Vigilance and Enforcement Department since August 2014 and some officers in Hyderabad informed him about some defamed mobile messages received by them regarding Rice Mafia activities in Guntur district, and defaming him and other officials, and the Hon'ble Minister perused the mobile numbers from where messages received are 8297075408 and 8790498903 respectively on 05.03.2015, 06.03.2015 and on 14.03.2015 and another SIM was sent to higher authorities and that some miscreants are causing mental harassment and degradation to his reputation, therefore to take action.

3. Pursuant to which, the crime is registered for the offences supra. Chapter 21 of Indian Penal Code deals with defamation covered by Sections 499 to 502 and Chapter 22 of IPC covered by Sections 503 to 510, deals with criminal intimidation insult and annoyance. So far as Section 499 IPC is concerned, it is a definition Section and punishment provided is in Section 500 IPC. Section 500 IPC speaks the jurisdiction respectively one in the case of President or Vice President or Governor of a State or an Administrator of Union Territory or the Minister in respect of his conduct in discharging his public functions when instituted a complaint made on Public Prosecutor, it is triable by Court of Session and in any other case by Judicial Magistrate of First Class. The offence under Section 500 is non-cognizable

equally offence under Sections 501 and 502, which related to printing or engraving of any matter knowing or having good reason believed to be defamatory of any person or offered for sale of any printing or engraving substance containing the defamatory matter knowingly.

4. So far as the offence under Section 507 IPC concerned, the same is also non-cognizable, which deals with criminal intimidation by an anonymous communication or having taken precaution to conceal the name or abode of the person from whom the threat comes.

5. Coming to the offence under Section 189 IPC, it is also non-cognizable and the A.P. Amendment by G.O.Ms.No.732, dated 05.12.1991 did not ripe into a statutory amendment nor extended the ordinance in making it cognizable in relation to the offence of threatening the public servant with injury to him or one in whom he is interested to induce him to do or forbear to do any official act.

6. Coming to the offence under Section 66-A of the Information Technology (for short "I.T. Act"), the same is struck down by Apex Court as unconstitutional in the expression in ***Shreya Singal Vs Union of India***, which is in relation to sending offensive messages or false message knowingly false message to cause annoyance or inconvenience, insult, intimidation, injurer hatred or to ill will etc. The Apex Court struck down the said Section 66 as violative under Article 19(1)(A) and is not supported by Article 14 of the Constitution of India.

7. So far as Section 66 (c) of I.T. Act is concerned, it speaks whoever fraudulently or dishonestly make use of any identification feature of another person is liable to be punished with imprisonment. Section 66 (c) of the Act concerned, the victim is the person, who must be complained of whose identification feature is fraudulently or dishonestly made in use. Here, it is not the case of the 2nd respondent-de facto complainant, Superintendent of Police that the accused are fraudulently or dishonestly making use of his identification feature. Section 66(c) is basically has no application in registering the case.

8. Sections 189 and 507 IPC are all non-cognizable offences and for registering the F.I.R., there is a legal bar by virtue of Section 155 of Cr.P.C., thereby the very F.I.R proceedings are unsustainable, without going into the merits of the matter.

9 . Equally, coming to Crime No.122 of 2015 registered for the offence punishable under Section 66(A) and 66-C of the I.T Act. The very report of the 2nd respondent-complainant M.Subba Rao speaks that on 14.05.2015, the accused B.V.Gopal Reddy, with the assistance of one Prasad Rao, Advocate of Hyderabad, by using the I.P proof of some other persons of the SIM card numbers referred supra in Crime No.80 of 2015, by obtaining SIM cards in order to blackmail and intimidate, sent the messages, thereby it defamed the TDP leader's (Minister's) image and caused mental agony and including the party workers self-confidence and it causes harm to the society, thereby to take action. There is no sanction obtained under Section 199(4) Cr.P.C. As per Section 199 (2) Cr.P.C., Public Prosecutors alone to file a complaint in writing before a Court of session irrespective of anything contained in the Cr.P.C., for the offence under this chapter 21 IPC (Section 499 to 502), even in relation to the offence alleged to have committed against the person in the cadre of Minister of a State or of a Union or any public servant employed in connection of affairs of Union or State in respect of his or their conduct in discharging all the public functions. Here also, the said complaints are unsustainable and the said crimes registered are unsustainable and same also held by the Apex Court in the latest expression in ***Rajdeep Subdesa Vs Station of A.P.***

10 . Having regard to the above, the proceedings against the accused/petitioner are liable to be quashed. It is needless to say that will not take away right to file any private complaint by the persons, aggrieved if any.

11. Hence, these two Criminal Petitions are allowed and all the proceedings in FIR No.80 of 2015 of Vinukonda P.S., Guntur district and in F.I.R. No.122 of 2015 of Chilakurupet P.S., Guntur District against the accused/petitioner are hereby quashed. The bail bonds of the petitioner/accused, if any, shall stand cancelled.

Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

JUSTICE Dr B. SIVA SANKARA RAO.

Date : 16-11-2015

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