

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.7996 of 2015

ORDER:

1 This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner / Accused No.1 in S.T.C.No.109 of 2014 on the file of the Court of the Special Judicial Magistrate of II Class, Gurajala, Guntur District.

2 Sri N. Naveen Kumar, the learned counsel for the petitioner, submitted that the learned Magistrate committed grave error while taking cognizance of the offence under Section 188 of IPC against the petitioner basing on a police report which is in violation of the provisions of Section 195 Cr.P.C. He further submitted that even if the allegations made in the complaint are ex facie taken to be true and correct, no case is made out against the petitioner for the offences punishable under Sections 341 and 283 of IPC.

3 The learned Additional Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

4 The facts leading to filing of the present petition are as follows:

The Mandal Parishad Development Officer, Karampurdi lodged a complaint to the Station House Officer, Karampudi Police Station, who in turn registered a case in Cr.No.97 of 2014 for the offences punishable under Sections 341, 188 and 283 r/w 34 of IPC against the petitioner and another and investigated into the case. After completion of investigation, the investigating officer laid the charge sheet against the petitioner and another for the above mentioned offences. The learned Special Judicial Magistrate of II Class, Gurajala has taken cognizance of the offence against the petitioner and another under Sections 341, 188 and 283 of IPC and numbered the charge sheet as S.T.C.No.109 of 2014. Hence the present Criminal Petition to quash the proceedings in the above case.

5 To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to Section 195 of Cr.P.C. which reads as follows:

Section 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, or

(ii) of any abetment of, or 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;

6 A perusal of the above provision clearly demonstrates that no court shall take cognizance of offences under Sections 172 to 188 IPC except on the complaint in writing by a public servant concerned or some other public servant to whom he is administratively subordinate. A perusal of the record clearly reveals that the complainant has not followed the procedure contemplated under Cr.P.C. Any investigation conducted in violation of Section 195(1)(a) Cr.P.C. is non-est in the eye of law. Cognizance of offence taken by the court, basing on the police report which is non-est in the eye of law, is not legally sustainable. In similar set of facts, this court made the following observations in Criminal Petition No.5325 of 2009, dated 07.9.2009.

Therefore, there is no possibility of the Inspector of Police further pursuing the first information report to its logical conclusion and it is only those who are competent to complain against the violation of the guidelines of the High Court of Andhra Pradesh or the provisions of Sections 30 and 30A of the Police Act, 1861 that can take such action. Any action under Sections 30 and 30A of the Police Act, 1861 can only be taken by the Superintendent or Assistant Superintendent of Police and certainly not by the Inspector of Police and therefore any complaint against its violation could not have been by the Inspector of Police. Under the circumstances, the continuance of the further proceedings in the crime appears to be not *prima facie* called for and to be offending in the interests of justice and hence, the inherent jurisdiction has to be invoked.

7 The facts of the above cited case are almost similar to the facts of the case on hand. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.PC while taking cognizance of offence under Section 188 IPC.

8 Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioner would certainly amount to abuse of process of Court. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to quash the proceedings against the petitioner/ A1.

9 The other submission made by the learned counsel for the petitioner is that no case is made out against the petitioner under Sections 341 and 283 of IPC. To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the ratio laid down by this Court in ***Dr. Kodela Siva Prasad Rao and Others V. Koritala Venkata Ramanaiah and another*** wherein this Court held as follows:

32. A reading of the complaint and the sworn statements of the witnesses shows that the petitioners / accused who are allegedly heading the rasta roko had no intention to prevent the complainant and others travelling in the jeep to proceed further. Therefore, it cannot be said that the petitioners / accused said to have organized rasta roko had voluntarily obstructed the complainant and other occupants of the vehicle to proceed further. At the most it can be said that the petitioners / accused caused a little inconvenience to the occupants of the vehicle because the vehicle could not proceed further due to the rasta roko said to have been organized by the petitioners / accused.

33. Section 95 of IPC deals with such a situation wherein it has been stated that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. Even if any little inconvenience was caused to the complainant because of rasta roko said to have been organized by the petitioners / accused, it squarely comes within the ambit of Section 95 IPC. In the circumstances of the case, continuance of criminal proceedings against the petitioners / accused amounts to abuse of process of Court.

10 The facts of the case on hand are almost identical to the facts of the case cited supra. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, I am of the considered view that continuation of criminal proceedings against the petitioner / A.1 would certainly amount to abuse of process of Court. Viewed from any angle, there are grounds more so valid grounds to quash the proceedings against the petitioner / A.1.

11 Accordingly, this Criminal Petition is allowed quashing the proceedings against the petitioner / A.1 in STC No.109 of 2014 on the file of the Court of the Special Judicial Magistrate of II Class, Gurajala, Guntur District. As a sequel, the miscellaneous petitions, pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 30th November, 2015

Kvsn