

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.8231 of 2015

ORDER:

1 This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner in S.T.C.No.55 of 2015 on the file of the Court of the Judicial Magistrate of I Class, Nagarkurnool, Mahabubnagar District.

2 Sri Challa Srinivas Reddy, 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.

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

4 A perusal of the record reveals that the Returning Officer, Assembly and Parliament constituency of Kodangal – 72 submitted a complaint to the Station House Officer, Maddur Police Station stating that some unknown person is distributing voter slips with party symbol in Nidijinta village of Maddur Mandal. Basing on the said complaint, the Station House Officer Maddur Police Station registered a case in Cr.No.57 of 2014 for the offence punishable under Section 188 of IPC. After completion of investigation, the investigating officer laid the charge sheet against the petitioner for the above mentioned offence. The learned Judicial Magistrate of I Class, Nagarkurnool has taken cognizance of the offence against the petitioner and another under Section 188 of IPC and numbered the charge sheet as S.T.C.No.55 of 2015. Hence the present Criminal Petition to quash the proceedings in the above case.

5 The predominant contention of the learned counsel for the petitioner is that the Station House Officer registered the case against the petitioner and investigated into the same in violation of the provisions of Section 195 Cr.P.C.

6 In order to appreciate the contention of the learned counsel for the petitioner it is apposite to extract 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;

7 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.

8 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.

9 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.

10 Accordingly, this Criminal Petition is allowed quashing the proceedings against the petitioner in S.T.C.No.55 of 2015 on the file of the Court of the Judicial Magistrate of I Class, Nagarkurnool, Mahabubnagar 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