

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5870 of 2015

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ORDER :

This criminal petition is filed by the petitioners/A.1 to A.7 under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.40 of 2014 on the file of the Judicial Magistrate of First Class, Dhone, Kurnool District, for the offences punishable under Section 188 IPC and Section 214 of the Andhra Pradesh Panchayath Raj Act, 1994 (for short, 'the Act').

2. Heard the learned counsel for the petitioners as well as the 1st respondent-State represented by the Public Prosecutor before admission and before ordering any notice to the 2nd respondent and perused the material on record.

3. The learned Magistrate, Dhone, has taken cognizance of the offences supra based on the final report of the police (out come of Crime No.159 of 2013 of Bethemcherla P.S.) for the said offences against the accused supra.

4. The contention of the learned counsel for the petitioners/accused is two fold. So far as offence under Section 188 IPC is concerned, it must be by private complaint by the public servant or a person authorized by him as per Section 195 sub section (1) clause (a) Cr.P.C. So far as the offence under Section 214 of the Act is

concerned, as per Section 2(c) of Cr.P.C., definition of cognizable offence and cognizable case, if one reads with Item 3 of Schedule-II of Cr.P.C. it provides offences punishable up to three years are non-cognizable. The punishment provided for the offence under Section 214 of the Act is as per Section 214(2) of the Act maximum two years or with fine or with both, to say it is a non-cognizable offence though not specifically stated under the Act by virtue of Sections 4, 5, 2 (c) read with Schedule-II of Cr.P.C. Once it is a non-cognizable offence, the police report is not sustainable under Section 154 Cr.P.C., but for entering of information and directing the informant to approach the Magistrate under Section 155 (1) Cr.P.C. and permission of the Magistrate specifically under Section 155(2) Cr.P.C. It is the submission there from that on both counts for both offences, cognizance taken from the police final report under Section 173 Cr.P.C. out come of investigation of the crime registered under Section 154 Cr.P.C., by the Magistrate under Section 190 Cr.P.C., is unsustainable. In this regard, the expressions placed reliance of this Court another Bench are (1) In CrI.P.No.4494 of 2009 for the offence under Section 188 IPC and Section 310 of the Town Nuisance Act and 31 of Police Act, 1861, where the Town Nuisance Act and Police Act offences concerned are non-cognizable and the offence under Section 188 IPC as per Section 195(1) (a) Cr.P.C. must be by private complaint, thereby held not

sustainable on police report and consequently the proceedings of C.C.No.230 of 2009 were quashed. (2) Equally in CrI.P.No.9854 of 2009 the proceedings of C.C.No.81 of 2009 were quashed, where police on a report registered the crime and investigated and filed charge sheet, that was taken cognizance for the offence under Section 188 IPC because of the bar under Section 195 (1)(a) Cr.P.C. Hence, the proceedings of C.C.No.40 of 2104 are not sustainable and consequently, the same is liable to be quashed.

5. Having regard to the above, this criminal petition allowed and all the proceedings relating to C.C.No.40 of 2014 on the file of the Judicial Magistrate of First Class, Dhone, Kurnool District, are quashed against the petitioners. The bail bonds of the petitioners, if any, shall stand cancelled. Needless to say, it is left open to the complainant to seek the available remedy as per law.

6. Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

6th July 2015.

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