

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD
RAO**

+Crl.P.No.200 of 2015

%04.02.2015

Between:

B. Naveen Nischal.
....Petitioner

AND

State of Andhra Pradesh, Rep. by P.P
and another.

Respondents

! Counsel for Petitioner : Sri T. Vinod Kumar

^ Counsel for Respondent No.1 : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.200 of 2015

ORDER:

The petitioner/accused seeks to quash the proceedings in Cr.No.51 of 2014 of I Town Police Station, Hindupur. On the report given by Town Planning Officer, Hindupur Municipality who was the Official of Model Code of Conduct Team-IV alleging that the petitioner/accused published a pamphlet and

circulated by keeping the same between the folders of *Sakshi* daily newspaper on 10.03.2014 without disclosing the particulars of printer and publisher of the said pamphlet and thus violated election code, the police of Hindupur I Town PS registered a crime under Section 127A of Representation of the People Act, 1951 (for short "RPAct") and Section 343-E of A.P. Municipalities Act, 1965 (for short "Municipalities Act") and investigating the matter.

2 a) Learned counsel for petitioner submitted that as per the allegations of complaint the petitioner committed the offence on 10.03.2014 but on 10.03.2014 Code of Conduct relating to Municipal Elections alone was in force and he was not a candidate for Municipal Elections but a prospective candidate for Hindupur Assembly Elections and notification for State Assembly Elections was not issued by 10.03.2014 and therefore, he was not the '*candidate*' within the meaning of Section 127A of R.P. Act by 10.03.2014. Further, in the pamphlets which were said to be circulated, he has not canvassed for or against any of the candidates of the Municipal Elections and therefore, he cannot be said to have violated any Code of Conduct relating to Municipal Elections and therefore, continuation of proceedings against him would amount to abuse of process of law.

b) Expatiating his arguments, he submitted that so far as election for Municipalities in Andhra Pradesh was concerned, Notification No. 86/SEC-F2/2014 was issued by State

Election Commissioner on 03.03.2014 and whereas Notification for the election of Legislative Assembly of the State of Andhra Pradesh was issued by the Governor on 12.04.2014 and consequent Notification of Election Commission of India was issued on 12.04.2014 fixing the date of election as 07.05.2014. Learned counsel argued that in view of the above respective notifications, by 10.03.2014 the Code of Conduct relating to Municipal Elections alone was in vogue but not the Code of Conduct relating to Assembly Elections and the petitioner/accused was not a candidate for Municipal Elections and the contents in the pamphlet are also not relating to any of the candidates of Municipal Election and therefore, the question of his violating the Code of Conduct for Municipal Elections or provisions under Section 127A of RP Act does not arise. He thus prayed to quash the proceedings.

3) Learned Public Prosecutor opposed the petition submitting that petitioner violated the Code of Conduct by printing pamphlet without mentioning the names of the printer and publisher and thus committed the offence. He thus prayed to dismiss the petition.

4) In the light of above rival arguments, the point for determination in this petition is:

“Whether there are merits in this petition to allow?”

5) **POINT**: The allegation is that the accused who is a YSR

Congress Party candidate for Hindupur Assembly Constituency published the pamphlet and circulated by keeping the same in *Sakshi* daily newspaper dated 10.03.2014 without mentioning the particulars of printer and publisher and thus violated the Code of Conduct and committed the offence under Section 127A of RP Act and Section 343E of Municipalities Act.

a) As can be seen from the copies of Notifications filed by the petitioner, as on the date of offence i.e. 10.03.2014 Notification No.86/SEC-F2/2014 dated 03.03.2014 was issued by the State Election Commissioner for conducting Municipal Elections in the State of Andhra Pradesh and by the date of offence as rightly submitted by the counsel for petitioner, the Notification for the General Elections to the State of Andhra Pradesh was not issued. The said notification was issued only on 12.04.2014.

b) Then, a perusal of pamphlet said to be printed by the petitioner/accused shows that it does not contain any material promoting or prejudicing the election of a candidate or group of candidates concerned to Municipal Elections. Further, admittedly he was not the candidate for Municipal Elections. In the said pamphlet the petitioner allegedly made a request to the voters of Hindupur Assembly Constituency to give him an opportunity to serve as a Member of Legislative Assembly from Hindupur Assembly Constituency.

c) In the above backdrop, it has to be seen whether there is any *prima facie* accusation against the

petitioner/accused for the offence under Section 127A of RP Act and Section 343E of Municipalities Act.

Section 127 A of RP Act reads thus:

“[127A. **Restrictions on the printing of pamphlets, posters, etc. -**

(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster---

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,--

(i) where it is printed in the capital of the State, to the Chief Electoral Officer, and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,--

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of subsection (1) or subsection (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.”

Section 343 E of Municipalities Act reads thus:

“ 343-E Restrictions on the printing of pamphlets, posters etc.:-

- (1) No person shall print or publish or cause to be printed or punished, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.
- (2) No person shall print or cause to be printed any election pamphlet or poster:-
 - (a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and
 - (b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document —
 - (i) where it is printed in the capital of the State, to the Election Authority, and
 - (ii) in any other case, to the District Magistrate of the district in which it is printed.
- (3) For the purpose of this Section, —
 - (a) any process for multiplying copies of a document other than copying it by hand, shall be deemed to be printing and the expression ‘printer’ shall be constructed accordingly; and
 - (b) “election pamphlet or poster” means any printed pamphlet, handbill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election,

but does not include any handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both.”

Thus, both the sections are pare-materia with each other.

d) A reading of the above sections would give an understanding that it is an offence if any person prints or publishes or causes to print or publish any “election pamphlet or poster” which does not bear on its face the name and address of the printer and publisher thereof. The meaning of “election pamphlet or poster” has been given in the respective sections. A perusal of copy of the poster would show that as rightly alleged it does not contain the name of the printer and publisher on the face of it. To that extent there appears to an apparent violation. However, that is not the end of the matter. When the meaning of “election pamphlet or poster” is perused and applied to the impugned pamphlet, the impugned pamphlet does not contain any material in promoting or prejudicing election of a candidate or group of candidates relating to Municipal Elections. As already stated supra, the petitioner through the pamphlet only appeals to the voters of the Hindupur Assembly Constituency to give him an opportunity in the forthcoming State Assembly Elections.

Therefore, in my considered view, he has not violated the Code of Conduct in vogue in respect of the Municipal Elections. So far as the violation of Code of Conduct relating to Assembly Elections is concerned, same was not in vogue by 10.03.2014 since Notification was yet to be given by then. Therefore, continuation of criminal proceedings in Cr.No.51 of 2014 would certainly amount to abuse of process of law. Therefore, Cr.No.51 of 2014 is liable to be quashed.

6) In the result, this Criminal Petition is allowed and proceedings in Cr.No.51 of 2014 of Hindupur I Town PS, Ananthapur District are hereby quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.02.2015

Note: L.R.Copy to be marked: Yes / No

Murthy