

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+CRIMINAL PETITION No.5612 of 2015

-

% 10-09-2015

#M.Shiva Shankar and another

....Appellants

Vs.

\$ State of Telangana rep. by its Public Prosecutor

.... Respondent

!Counsel for the Petitioner : Sri T.Lakshmi Narayana

Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

1. 2015(2) ALT (CrI.) 1 (A.P)
2. 2014(2) ALD (CrI.) 674
3. 2005 CrI.L.J 2161 (1)
4. AIR 1998 SC 2360

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.5612 of 2015

ORDER :

The criminal petition is filed by the petitioners/A-1 and A-2 under Section 482 Cr.P.C to quash proceedings in C.C. No.63 of 2015 on the file of VIII Metropolitan Magistrate, Cyberabad at Rajendra Nagar, Ranga Reddy

District which is the outcome of Crime no.332 of 2014, dated 26.04.2014 registered for the offence punishable under Section 181, 171-E I.P.C.

2) Heard the learned counsel for the petitioners and the Public Prosecutor before admission and perused the entire material on record including the expression of this Court in ***Kesineni Srinivasa Rao V. State of A.P.***^[1]

3) The main contention of the learned counsel for the petitioners from the factual matrix from the crime registered by the police that the offences are non-cognizable and the police without even permission of the Magistrate as contemplated by Section 155(2) Cr.P.C taken cognizance and the cognizance taken per se unsustainable without going into the merits, cognizance taken even there is no judicial application of mind in according permission pursuant to the application under Section 155(2) Cr.P.C and that this Court (another bench) in ***S.Purnachandra Rao V. State of A.P.***^[2] referring to Section 155(2) Cr.P.C by correlating to Section 156(3) Cr.P.C of the order of a Magistrate who may order such investigation from the words used respectively that there must be a judicial application of mind to accord permission and thereby the very permission accorded is non-judicious and unsustainable to sustain the prosecution or to take cognizance. Apart from the above, for the offence

under Section 181 I.P.C, there is a bar under Section 195(1)(a) Cr.P.C as laid down by the Apex Court in ***Iqbal Singh Marwah V. Meeenakshi Marwah***^[3]. From the above, so far as Section 171-E relates to bribery, it speaks by the proviso of Section 171-E I.P.C that bribery by treating shall be punished with fine and the explanation defines treating to mean that form of bribery where the gratification consists in food, drink, entertainment or provision. This Court (another bench) in ***Kesineni Srinivasa Rao*** (supra) held referring to the meaning of gratification laid down by the apex Court in ***Mahmoodkhan Mahboobkhan Pathan V. State of Maharashtra***^[4] that distribution of T-shirts with pictures of the leaders and the contesting candidate even in party colors will not give satisfaction to the recipients to term as gratification apart from such shirts those wear feel shy to wear in public for absence of pleasure or satisfaction to the recipient is not gratification. Therefrom it can be concluded that taking of cognizance by the learned Magistrate in the above case is unsustainable and is liable to be quashed.

4) Having regard to all the above discussion, so far as the offence under Section 181 I.P.C concerned it must be only by private complaint as offence affecting the administration of justice or the like and the report registered as a crime as if a cognizable offence and

investigation taken up and filing of charge sheet for its taking of cognizance per se unsustainable. So far as the cognizance taken from any permission accorded to take cognizance in the non-cognizable offences by the learned Magistrate is per se unsustainable as outcome of non-application of judicial mind and there is no such permission even for bar to the police to register as if a cognizable offence for its un-sustainability. It is needless to go into the other merits regarding the application of Section 171-E I.P.C as to its an election poster or the calendar or the sticker or pamphlet as the case may be for what is discussed above.

5) Thus, prima facie the prosecutions including the cognizance taken are unsustainable.

6) In the result, the petition is allowed and the proceedings in C.C. No.5612 of 2015 on the file of VIII Metropolitan Magistrate, Cyberabad at Rajendra Nagar, Rangareddy District are quashed. The bail bonds of the accused, if any, shall stand cancelled. Consequently, the miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.10th September, 2015
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[\[1\]](#) 2015(2) ALT (CrI.) 1 (A.P)

[\[2\]](#) 2014(2) ALD (CrI.) 674

[\[3\]](#) 2005 CrI.L.J 2161(1)

[\[4\]](#) AIR 1998 SC 2360