

HON'BLE SMT. JUSTICE ANIS

CRIMINAL PETITION No. 6420 OF 2012

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ORDER:

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This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioner/A.1 requesting to quash the proceedings in C.C.No.456 of 2009 on the file of the learned Judicial First Class Magistrate at Suryapet, Nalgonda District .

2. The origin of the case is that the second respondent, who is the Depot Manager, A.P.S.R.T.C., Suryapet Bus Depot, gave a complaint to the police and the same was registered as a case in Crime No.74 of 2009 on 12.03.2009 for the offences punishable under Section 188 of the Indian Penal Code (for short 'IPC') and under Section 4 of A.P. Prevention of Disfigurement of Open Places and Prohibition of Obscene and Objectionable posters and Advertisements Act, 1997 (for short 'the Act').

3. According to the petitioner, the police filed a Charge sheet and the same was numbered as C.C.No.456 of 2009 on the file of the Judicial First Class Magistrate at Suryapet, Nalgonda District. The petitioner stated that no offence is made out against him much less the offence under Section 188 IPC and Section 4 of the Act and the Magistrate without considering the same, took cognizance and issued summons to the petitioner, and the petitioner attended the Court on 01.09.2012. The petitioner further stated that the second respondent is not the competent authority to file a complaint and the Magistrate ought not to have taken cognizance under Section 16 of the Act. The petitioner also stated that the District Collector, Nalgonda is only competent to file the complaint or any Officer not below the rank of Mandal Revenue Officer authorized by him in this behalf, but the complaint is filed by the Depot Manager, APSRTC, Suryapet Bus Depot, Nalgonda District saying that under the instructions of RDO, Suryapet, he filed the complaint, and therefore he is not the competent authority. The petitioner stated that the statements under Section 161 Cr.P.C. do not speak about the fact that the petitioner himself affixes any objectionable advertisements, so the allegations in the complaint

are bald and vague and do not sufficient to take cognizance, and hence, no case is made out under Section 4 of the Act. The petitioner also stated that Section 188 IPC is applicable only an order is promulgated by a public servant lawfully empowered to promulgate such order by directing some persons to abstain from certain act and if such persons disobeyed such order. The petitioner stated that in the present case, the allegation is that the accused already got the advertisement or slogans of PRP through their men on the wall of the APSRTC, Suryapet bus depot and Section 188 IPC pre-supposes that an order is passed firstly asking the persons to abstain from doing an act and in case it is disobeyed, then Section 188 IPC applies, and therefore, the learned Magistrate ought not to have taken cognizance and more so, it is not permissible under law.

4. The learned counsel for the petitioner argued that as per Section 16 of the Act, the District Collector or any Officer not below the rank of Mandal Revenue Officer authorised by him has to file the complaint and in the present case, the Depot Manager, APSRTC, Suryapet Bus Depot filed the complaint on 12.03.2009 to the police and the same was registered under Section 4 of the Act, therefore the Depot Manager is not competent to file the complaint and the complaint against the petitioner under Section 4 of the Act is to be quashed. It is also argued that Section 188 IPC contemplates that the individual has knowledge that the public authority promulgated the order and he was directed to abstain from certain acts and if he disobeys such direction, he is liable for punishment. It is also argued that the petitioner has no knowledge about the election notification which was issued on 02.03.2009 and he was not individually directed to abstain from doing certain acts, and further, notice was served to the son of the petitioner on 10.03.2009 and the complaint was filed on 12.03.2009. It is also argued that the statement of one Chityala Rambabu recorded by the police shows that one month prior to 13.03.2009, the writings were made on the walls of the bus depot i.e. in the month of February those writings were written and the election notification was issued in the month of March, 2009, hence Section 188 IPC is not applicable as the petitioner does not have any notice nor be directed to abstain from doing certain acts. It is also argued that the petitioner personally has not done the said acts, therefore Section 4 of the Act and Section 188 IPC are not applicable to the present case

and prayed the Court to quash the proceedings in C.C.No.456 of 2009 on the file of the Judicial First Class Magistrate at Suryapet, Nalgonda District.

5. On the other hand, the learned Public Prosecutor argued that Section 4 of the Act and Section 188 IPC are applicable to the facts of the present case and the petitioner is liable to be prosecuted under both the sections and prayed the Court to dismiss the petition.

6. Now, the point for determination is –

Whether the petitioner/A.1 has made out any valid or sufficient grounds for quashing the proceedings as prayed for?

7. **Point:**

Section 4 of the Act reads thus:

“Penalty for unauthorised disfigurement by advertisements:- Whoever affixes to, or inscribes or exhibits on any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which shall not be less than one thousand rupees but which may extend to two thousand rupees, or with both.”

Section 16 of the Act reads thus:

“Cognizance of offences:- No Court shall take cognizance of any offence punishable under this Act except on a complaint filed, in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada by the Commissioner of Police or by any Police Officer not below the rank of an Inspector of Police authorised by him in this behalf and elsewhere by the District Collector or any Officer not below the rank of a Mandal Revenue Officer authorised by him in this behalf.”

8. A bare reading of the above Sections shows that no Court shall take cognizance of the offence except by way of a complaint by the District Collector, Nalgonda or any Officer not below the rank of Mandal Revenue Officer authorized by him in this behalf. In the present case, the Depot Manager, Suryapet Bus Depot filed the complaint. But, the prosecution has not filed any documentary evidence to show that the Depot Manager was authorized by the District Collector, Nalgonda to file the complaint. Therefore, the learned counsel for the petitioner rightly pointed out that the Magistrate is not authorized to take cognizance of the offence under Section 4 of the Act

against the petitioner.

9. Coming to Section 188 IPC, the petitioner does not have personal knowledge about the promulgating of the order by the public servant. Further, the petitioner was not personally directed to abstain from certain acts. Therefore, the question of disobeying the order promulgated by the public servant does not arise. Admittedly, no notice was served personally to the petitioner on 10.03.2009. The election notification was issued on 02.03.2009. A perusal of the statements recorded by the Investigating Officer shows the alleged writings were taken place in the month of February, 2009, that means before the election notification dated 02.03.2009, those writings were made on the walls of bus depot. The petitioner was not directed to abstain from doing certain acts and the petitioner has not done personally. Therefore, Section 188 IPC has no application to the facts of the present case as the petitioner has not disobeyed the directions of the public servant and he has no knowledge about the order of promulgation issued by the public servant.

10. In view of the aforesaid, continuation of the impugned proceedings against the petitioner is nothing but abuse of process of law and hence, the impugned proceedings are liable to be quashed as against the petitioner herein. The point is accordingly answered in favour of the petitioner/accused.

11. In the result, the Criminal Petition is allowed and the proceedings against the petitioner/A.1 in C.C.No.456 of 2009 on the file of the learned Judicial First Class Magistrate at Suryapet, Nalgonda District, are hereby quashed.

12. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 09.02.2015

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