

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.5778 OF 2012

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ORDER:

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This Criminal Petition is filed under Section 482 of Cr.P.C. by A.1 seeking to quash the proceedings against him in C.C.No.157 of 2011 pending on the file of Additional Judicial First Class Magistrate, Anantapur for the offences punishable under Sections 188 and 171 (E) IPC.

The facts of the case are as follows:

During the election to erstwhile Andhra Pradesh Legislative Council held on 13.3.2011, the petitioner contested from Kadapa, Anantapur and Kurnool Teachers' constituency as PRTU candidate. It is alleged that he took Room No.411 in Amaravathi Lodge, Anantapur for hire and kept hot boxes for distributing them to the voters to get votes in his favour and that he directed A.2 to distribute the said boxes to the voters. On the report of second respondent herein, a case was registered and after completion of investigation, charge sheet was laid against him and A.2 for the alleged offences.

The main contention raised by the learned counsel for the petitioner is that to invoke the provision under Section 188 IPC, the complaint should be lodged by a person, who promulgated the prohibitory order under Section 30 of the Police Act, 1861.

As far as offence under Section 188 IPC is concerned, Section 195 (1) (a) Cr.P.C. mandates that no Court shall take cognizance of the offence under Section 188 IPC except on the complaint in writing by the public servant who promulgated the order or a person to whom such a public servant is administratively subordinate. Admittedly, in the present case, no

complaint was filed by the person who promulgated the order under Section 30 of the Police Act, 1861. Thus, the charge sheet is said to have violated the mandatory provision under Section 195 (1) (a) Cr.P.C. Further, in the present case, 7 hot boxes were found in the name of the petitioner herein. Admittedly, the petitioner was not present at the place of occurrence concerned. Furthermore, Section 171B IPC speaks about the 'bribery' which runs as follows:

"171B. Bribery.—

(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward."

Mere recovery of hot boxes from A.2 that contain the name of A.1 does not amount to bribery. Further there is no presumption under the provision to presume that the said seized hot boxes are meant for the purpose of distribution to the voters concerned as bribe. Furthermore, it is an election for the Member of Legislative Council that too for the Teachers' Constituency. Under the above circumstances, mere recovery of the said hot boxes will not amount bribery and the petitioner cannot be proceeded for the alleged offences and the impugned proceedings are liable to be quashed.

In the result, the Criminal Petition is allowed and the impugned proceedings in C.C.No.157 of 2011 pending on the file of Additional Judicial First Class Magistrate, Anantapur are hereby quashed as against the petitioner herein.

Consequent thereto, the Miscellaneous Petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

22.09.2015

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