

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CRIMINAL PETITION No.7916 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.163 of 2015 on the file of V Additional Judicial Magistrate of the First Class, Kakinada which is the outcome of Crime No.81 of 2015, registered for the offence punishable under Section 171(B), 171(E), 188 read with 34 I.P.C and Section 123 of Representation of the Peoples Act. Section 171(B) I.P.C and Section 123 of R.P.Act are not punishment sections, but for Sections 171(E) and 188 read with 34 I.P.C supra.

2) Heard the learned counsel for the petitioners and the Public Prosecutor before admission and perused the entire material on record.

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, as to the alleged confession of A-1 of his interest regarding independent contesting candidates, he and A-2 were distributing voter slips and caste to vote by voters so to vote or they got with them model ballot papers of an independent candidates, whether they constitute any offence under Section 177(E) and 188 I.P.C. Apart from the above, for the offence under Section 188 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***. From the above, so far as Section 171-B read with 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*** 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. In fact the case on hand, there is nothing even found any distribution of money or material but for allegedly possessing cash stating meant for distributing cash.

4) Having regard to all the above discussion, so far as the offence under Section 188 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-B read with E I.P.C as to its an election poster or the calendar or the sticker or pamphlet possessed or any cash possessed not an offence 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.163 of 2015 on the file of V Additional Judicial Magistrate of the First Class, Kakinada are quashed. The bail bonds of the

accused, if any, shall stand cancelled. Consequently, the miscellaneous petitions, if any pending, shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Dt.11<sup>th</sup> September, 2015**

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