

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ CRIMINAL PETITION Nos.6996, 7002, 7003 & 7005 of
2015

% 14-08-2015

Crl.P.No.6996 of 2015

#Tummala Rama Brahmam & Ram and another
... Petitioners

and

\$ The State of Andhra Pradesh rep. by the Public
Prosecutor and another
... Respondents

Crl.P.No.7002 of 2015

#Anagani Ravi and another
... Petitioners

and

\$The State of Andhra Pradesh rep. by the Public Prosecutor
and another
... Respondents

Crl.P.No.7003 & 7005 of 2015

#V.Vamsi Mohan
... Petitioner

and

\$The State of Andhra Pradesh rep. by the Public Prosecutor
and another
... Respondents

!Counsel for the Petitioners : Sri A.Sudhakara Rao

Counsel for the Respondent No.1: 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 Nos.6996, 7002, 7003 & 7005 of
2015

COMMON ORDER :

The Criminal Petition No.6996 of 2015 is filed seeking to quash the proceedings in C.C. No.1026 of 2015 on the file of V Metropolitan Magistrate, Gannavaram which is the outcome of complaint filed by the 2nd respondent for the offence punishable under Section 127-A of the Representation of the Peoples Act. The Criminal Petition No.7002 of 2015 is filed seeking to quash the proceedings in C.C. No.98 of 2015 on the file of V Metropolitan Magistrate, Gannavaram which is the outcome of complaint filed by the 2nd respondent for the offence punishable under Section 127-A of the Representation of the Peoples Act. The Criminal Petition No.7003 of 2015 is filed seeking to quash the proceedings in C.C. No.469 of 2015 on the file of Additional Judicial magistrate of the First Class, Nuzvid which is the outcome of complaint filed by the 2nd respondent for the offence punishable under Sections 171-F and 188 of I.P.C. The Criminal Petition No.7005 of 2015 is

filed seeking to quash the proceedings in C.C. No.902 of 2015 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada which is the outcome of complaint filed by the 2nd respondent for the offence punishable under Sections 171-E, 171-F I.P.C and Section 127-A of the Representation of the Peoples Act.

2) Heard the learned counsel for the petitioners in all the above criminal petitions and the Public Prosecutor representing both the respondents 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 respective crimes registered by the police outcome of the report of the 2nd respondent viz., Superintendent of the M.D.O Office, Extension Officer, Panchayat Raj & Rural Development Department and the Special Officer, MCC as the case may be, that all 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 apart from the fact that in other matters, cognizance taken even there is no judicial application of mind in according permission pursuant to the application under Section 155(2) Cr.P.C in simply noted by the learned

Magistrate as 'permitted' 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 188 I.P.C, so far as C.C. No.469 of 2015 concerned, 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 or F as the case may be 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 four cases are unsustainable and are liable to be quashed.

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 in three out of four matters by the learned Magistrate with a single sentence as 'permitted' is per se unsustainable as outcome of non-application of judicial mind, leave about in the other matter, 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 or F 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. So far as offence under Section 127-A of the R.P. Act concerned even, importantly the offence is for non-bearing on the pamphlet, poster or the like, names and addresses of the printer and publisher claimed no printed and published to constitute the offence, the same is not even seized and produced before the Court either with the crime registered for investigation as part-I C.D to form part of

it or even with charge sheet. When there is no seizure and production of the material which is material for the Court to ascertain. In the absence of which in none of the matters there could be anything to make out a case under Section 127-A of the R.P. Act to sustain.

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

6) In the result, all the petitions are allowed and the proceedings in, C.C. No.1026 of 2015 on the file of V Metropolitan Magistrate, Gannavaram; C.C. No.98 of 2015 on the file of V Metropolitan Magistrate, Gannavaram; C.C. No.469 of 2015 on the file of Additional Judicial Magistrate of the First Class, Nuzvid, and C.C. No.902 of 2015 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada 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.14th August, 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