

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.30473 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, seeking quashment of CC.No.268/2009 on the file of the Judicial First Class Magistrate, Nandyal, Kurnool District, wherein the prosecution is pending for the alleged offence under Section 188 of the Indian Penal Code.

2. Heard Sri P.Gangaiah Naidu, learned Senior Counsel appearing for the learned counsel for the petitioner on record, Sri N.Bharath Babu and the learned Government Pleader for Home for the respondents.

3. Petitioner is the accused in the above criminal case. The point that emerges for consideration of this Court in the present writ petition is:

“Whether the prosecution launched against the petitioner for the alleged offence under Section 188 I.P.C is sustainable in view of the provisions of Section 195 (1) (a) of the Code of Criminal Procedure?”

4. In order to appreciate and adjudicate the above said issue, it would be necessary and appropriate to refer to the provisions of Section 188 of the Indian Penal Code and Section 195 (1) (a) of the Code of Criminal Procedure.

5. Section 188 of Indian Penal Code, reads as under:

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with

fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm. Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”

6. Section 195 (1) (a) of the Code of Criminal Procedure, reads as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.”

7. It is very much evident from the provisions of Section 195 (1) (a) of the Code of Criminal Procedure that the Court shall not take cognizance of any offence punishable under Section 172 to 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

8. In the instant case, the material available on record manifestly

demonstrates that the complaint was filed neither by the officer who promulgated the order nor by an officer who is administratively subordinate to him, but by the police. Therefore, the very prosecution launched against the petitioner is neither maintainable nor the continuation of the same is permissible. The learned Senior Counsel, in fact, has placed before this Court a Judgment of the Delhi High Court in ***Crl. R.C.No.4517/2014 (PANKAJ PRAKASH v. THE STATE AND ANOTHER)***. In the said judgment, the Delhi High Court, while relying on the judgment of the Hon'ble Apex Court in the case of ***C. MUNIAPPAN & ORS V. STATE OF TAMIL NADU***^[1], at paragraphs 19, 20 and 23, held as under:

“19. What logically follows from the above discussion is that if a 'complaint', as envisaged in Section 195 (1) (a), is not received by a Magistrate in respect of an offence under Section 188 IPC. the Magistrate cannot, on the basis of a 'police report' submitted under Section 173 (2), take cognizance, for, the 'police report' in the light of what has been discussed above, cannot be treated as the 'complaint', in writing, of the 'public servant concerned'.

20. We have, now, in our hands, a situation, where the police has been given the power to arrest a person without warrant if he is alleged to have committed an offence under Section 188, IPC, investigate the case, make seizure, if necessary, and submit 'police report'. We have, on the other hand, Section 195 (1) of the Code, which debars every Court from taking cognizance of such an offence unless a complaint, in writing, is received by the Magistrate from the 'public servant concerned' or his successor-in-office or of some other public servant to whom he is administratively subordinate. Though, granted by law, the power to arrest and submit report, the fact remains that when such arrest or investigation cannot lead to prosecution of a person, who is found to be an offender, it would be an abuse of the powers given to the police if they arrest a person for commission of an offence under Section 188 IPC. The abuse of the process of law is not necessarily confined to situations where an action is taken without law, but also when an action is taken under the law, though while taking such action, it is known to the law enforcement machinery that no fruitful purpose would be served.

23. In view of above discussion and the settled law, I am of the considered opinion that the Trial Court has no power to take cognizance under Section 188 of the IPC as the same is barred by Section 195 of the Cr P C. Consequently, the order dated 07.02.2014 passed by learned Magistrate and order dated 16.09.2014 passed by learned Additional Sessions Judge are hereby quashed.”

9. The legal position unhesitatingly and undoubtedly drives this Court towards an irresistible conclusion that the prosecution launched against the petitioner herein in CC.No.268/2009 on the file of the Judicial First Class Magistrate, Nandyal, Kurnool District squarely falls under the guideline No.6 at paragraph No.102 of the Judgment in the case of **STATE OF HARYANA V. BHAJAN LAL**^[2] and as such, the same is liable to be quashed. In this context, it may be appropriate to refer to the Guideline No.6, which reads as under:

“6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

10. For the aforesaid reasons, the writ petition is allowed, quashing the proceedings in CC.No.46/2009, on the file of the CC.No.268/2009 on the file of the Judicial First Class Magistrate, Nandyal, Kurnool District. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date:22.09.2015
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Dated 22nd September, 2015

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[\[1\]](#) (2010) 9 SCC 567

[\[2\]](#) 1992 SUPP (1) SCC 335