

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.12791 of 2015

ORDER:

1 This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/accused Nos.1, 3, 10, 11, 13 and 14 in C.C.No.38 of 2013 on the file of the Judicial Magistrate of First Class, Adoni, Kurnool District.

2 Sri K.Sita Ram, the learned counsel for the petitioners, submitted that the learned Magistrate committed grave error while taking cognizance of the offence under Section 188 read with 34 of IPC against the petitioners and others basing on a police report which is in violation of the provisions of Section 195 Cr.P.C.

3 The learned Public Prosecutor submitted that there are no grounds to interfere with the orders of the learned Magistrate.

4 A perusal of the record reveals that the A.S.I. of Adoni I Town Police Station lodged a complaint to the Station House Officer, Adoni, who in turn registered a case in Crime No.202 of 2012 for the offence punishable under Section 188 read with 34 of IPC. After completion of investigation, the investigating officer laid the charge sheet against the petitioners and others for the above mentioned offence. The learned Judicial Magistrate of First Class, Adoni, after satisfying himself with the material placed before him, has taken cognizance of the offence against the petitioners and others under Section 188 read with 34 of IPC and numbered the charge sheet as C.C.No.38 of 2013. Hence the present Criminal Petition to quash the proceedings in the above case.

5 As per the allegations made in the charge sheet, on 02.09.2012, the petitioners along with others have conducted a meeting in a public place thereby violated the orders passed under Section 30 of the Police Act.

6 The predominant contention of the learned counsel for the petitioners is that the Station House Officer registered the case against the petitioners and others and investigated into the same in violation of the provisions of Section 195 Cr.P.C.

7 In order to appreciate the contention of the learned counsel for the petitioners, it is

apposite to extract Section 195 of Cr.P.C. which reads as follows:

Section 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, 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;

8 A perusal of the above provision clearly demonstrates that no Court shall take cognizance of offences under Sections 172 to 188 IPC except on the complaint in writing by a public servant concerned or some other public servant to whom he is administratively subordinate. A perusal of the record clearly reveals that the complainant has not followed the procedure contemplated under Cr.P.C. Any investigation conducted in violation of Section 195 (1) (a) Cr.P.C. is non-est in the eye of law. Cognizance of offence taken by the court, basing on the police report which is non-est in the eye of law, is not legally sustainable. In similar set of facts, this court made the following observations in Criminal Petition No.5325 of 2009, dated 07.9.2009.

Therefore, there is no possibility of the Inspector of Police further pursuing the first information report to its logical conclusion and it is only those who are competent to complain against the violation of the guidelines of the High Court of Andhra Pradesh or the provisions of Sections 30 and 30A of the Police Act, 1861 that can take such action. Any action under Sections 30 and 30A of the Police Act, 1861 can only be taken by the Superintendent or Assistant Superintendent of Police and certainly not by the Inspector of Police and therefore any complaint against its violation could not have been by the Inspector of Police. Under the circumstances, the continuance of the further proceedings in the crime appears to be not prima facie called for and to be offending in the interests of justice and hence, the inherent jurisdiction has to be invoked.

9 The facts of the above cited case are almost similar to the facts of the case on hand. The learned Magistrate has not considered the scope of Section 195 (1) (a) Cr.PC while taking cognizance of offence under Section 188 read with 34 of IPC.

10 Viewed from factual or legal aspects, continuation of criminal proceedings

against the petitioners would certainly amount to abuse of process of Court. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to quash the proceedings against the petitioners.

11 Accordingly, this Criminal Petition is allowed quashing the proceedings against the petitioners/accused Nos.1, 3, 10, 11, 13 and 14 in C.C.No.38 of 2013 on the file of the Judicial Magistrate of First Class, Adoni, Kurnool District. As a sequel, the miscellaneous petitions, pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 03.12.2015

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