

THE HON'BLE SRI JUSTICE RAJA ELANGO

Crl.P.No.1860 of 2012

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ORDER

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This petition under Section 482 Cr.P.C. is filed by the petitioners/accused Nos.1 to 5 seeking to quash the proceedings in C.C.No.47 of 2009 on the file of the Judicial Magistrate of First Class, Atmakur.

2. The petitioners are involved in C.C.No.47 of 2009 for the offence punishable under Section 188 I.P.C. The Mandal Tahsildar had given complaint to the Sub-Inspector of Police, Srisailam I Town Police Station stating that on 21-03-2009 around 10.00 AM, the petitioners and others raised slogans and talked greatly about Prajarajyam Party leaders and party in the mike by entering into the Temple and caused disturbance to public, violating the election model code.

3. Heard both sides and perused the material on record.

4. Learned counsel for petitioners contended that for an offence punishable under Section 188 I.P.C, charge sheet should be filed by the person, who promulgated the prohibitory order, whereas in the present case, charge sheet is filed by the Sub-Inspector of Police, who is not an authorised person to file the same and therefore, he prays to quash the proceedings against petitioners.

5. From a perusal of the material on record, it is evident that Mandal

Tahsildar has filed the complaint against petitioners for violating the election Model Code of Conduct.

6. As far as the 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, the person, who promulgated the prohibitory order, should be competent to file the charge sheet or his superior. Thus, the mandatory provision under Section 195 (1) (a) Cr.P.C is said to have been violated. Therefore, this Court is of the view that the proceedings against the petitioners are liable to be quashed.

7. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.47 of 2009 on the file of the Judicial Magistrate of First Class, Atmakur, are quashed against the petitioners/accused. Miscellaneous petitions filed in this criminal petition, if any, pending, shall stand closed.

RAJA ELANGO, J

23rd November, 2015

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