

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.2387 of 2010

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner/accused in S.T.C. No.66 of 2009 on the file of the court of Judicial Magistrate of First Class, Uravakonda, Anantapur District.

2. The learned counsel for the petitioner submitted that the Station House Officer, Uravakonda Police Station (SHO) filed the charge sheet in violation of Section 195 Cr.P.C. He further submitted that the SHO has no right whatsoever to set the criminal law in motion for the offence under Section 188 IPC. ***Per contra***, learned Public Prosecutor submitted that this is not the stage to go into the merits of the case.

3. As per the allegations made in the charge sheet, on 23.4.2009, the petitioner/accused visited the polling booth at Uravakonda and canvassed in favour of Congress party candidate. The SHO *suo motu* registered the case in Crime No.81 of 2009 for the offences punishable under Sections 188 and 506 IPC. After completion of investigation, the SHO himself laid the charge sheet against the petitioner/accused under Sections 188 and 506 IPC. The learned Judicial Magistrate of First Class has taken cognizance of offence under Sections 188 and 506 IPC and issued summons to the petitioner.

4. A perusal of the record reveals that the Station House Officer, Uravakonda Police Station *suo motu* conducted investigation and filed the charge sheet. It is not out of place to extract hereunder Section 195(1)(a) Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offence 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, attempt to commit, such offence,
or
(iii) of any criminal conspiracy to commit, such offence,

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except on the complaint in writing of the public servant
concerned or of some other public servant to whom he is
administratively subordinate:

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 of the public servant concerned or some other public servant to whom he is administratively subordinate.

5. Admittedly the concerned Election Authority has not submitted complaint to the court. Section 2(d) Cr.P.C. defines '*complaint*'. A fascicular reading of Section 2(d) and Section 195(1)(a) Cr.P.C. demonstrate that the concerned public servant has to file complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure stated supra, would not be curable. Any investigation conducted basing on the complaint lodged by a person, who is not authorized under the provisions of Cr.P.C., is non-est in the eye of law. The learned Magistrate did not consider the scope of Section 195(1)(a) Cr.P.C., while taking cognizance of offences under Section 188 IPC.

6. Even if the allegations made in the charge sheet are *ex facie* taken to be true and correct, no case is made out against the petitioner/accused for the offence under Section 506 IPC.

7. 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.

8. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/accused in S.T.C. No.66 of 2009 on the file of the court of Judicial Magistrate of First Class, Uravakonda, Anantapur District. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

February 16, 2016.

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