

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.14220 OF 2016

ORDER

This Criminal Petition, under Section 482 Cr.P.C. is filed by the petitioner/accused seeking to quash the proceedings in C.C.No.546 of 2016 on the file of III Metropolitan Magistrate, Cyberabad at L.B.Nagar.

2. The petitioner is an accused in C.C.No.546 of 2016 for the offence punishable under Section 188 IPC and Section 612 of the Municipal Corporation Act. The Police Constable, Uppal, Cyberabad, had given complaint stating that as per the directions of the Station House Officer, Uppal Police Station, he along with another constable was performing patrolling duty at Blue Colt-IV, some unknown persons belong to Member of an Independent candidate, who contested GHMC elections, directed her followers to tied the concerned flags to a current pole and thereby, the accused violated the Municipal Corporation Act and Election Commission Code. Basing on the complaint, police registered a case.

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

4. Learned counsel for petitioner contended that for offence punishable under Section 188 IPC and Section 612 of the Municipal Corporation Act, complaint should be filed by the person, who promulgated the prohibitory order, whereas in the present case it is filed by the Police Constable, who is not an authorised person to file the same and therefore, he prays to quash the proceedings against petitioner.

5. From a perusal of the material on record, it is evident that Police Constable has filed a complaint against petitioner for violating the Election Code as well as Municipal Corporation Act.

6. As far as the offence punishable 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 petitioner are liable to be quashed.

7. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.546 of 2016 on the file of III Metropolitan Magistrate, Cyberabad, L.B.Nagar, are quashed against the petitioner/accused. Miscellaneous petitions filed in this criminal petition, if any, pending, shall stand closed.

M.S.K.JAISWAL , J

Dt:30.09.2016
YVL

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL



CRIMINAL PETITION No.14220 OF 2016

Dt:30.09.2016

YVL