

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CRIMINAL PETITION No.2575 OF 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner-accused in C.C.No.275 of 2009 on the file of the Additional Judicial Magistrate of I Class, Tadepalligudem.

2. The contention of the learned counsel for the petitioner is two fold viz., 1) the learned Magistrate has committed grave error while taking cognizance of the offence under Section 188 of IPC against the petitioner basing on a police report which is in violation of the provisions of Section 195 Cr.P.C. and 2) 171-E IPC is non-cognizable offence and therefore, the Investigating Officer has no right of whatsoever to investigate into the matter without prior permission of the concerned Magistrate.

3. The learned Public Prosecutor submitted that this is not the stage to go into the merits of the case.

4. A perusal of the record reveals that petitioner herein is the accused and the respondent herein is the *de facto* complainant. As per the allegations made in the complaint, on 21/22-04-2009 the petitioner distributed money to the voters to influence them. It is further alleged that an amount of Rs.13,900/- was seized from the petitioner. After completion of investigation, Sub-Inspector of Police, Tadepalligudem Police Station laid charge sheet against the petitioner for the offences under Sections 171-E and 188 IPC.

5. The learned Magistrate after satisfying himself with the material available on record, has taken the cognizance of the offence against the petitioner for the offences under Sections 171-E and 188 IPC and issued summons.

6. To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to 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;

7. 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. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.P.C. while taking cognizance of offence under Section 188 IPC.

8. Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioner-accused 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 petitioner-accused for the offence under Section 188 IPC.

9. it is needless to say that Section 171-E IPC is non-cognizable offence. In case of non-cognizable offence, police has no right of whatsoever to investigate into the matter without prior permission of the concerned Magistrate in view of sub-section (2) of Section 155 Cr.P.C. Charge sheet is silent with regard to obtaining of permission from the concerned Magistrate before commencement of investigation. A perusal of the record clearly reveals that the Sub-Inspector of Police, Tadepalligudem Police Station has not obtained prior permission of the learned Magistrate in order to investigate into the matter insofar as the offence under Section 171-E IPC is concerned. There is no

allegation in the complaint that to whom the petitioner has distributed the money. The allegations made in the complaint are ex facie taken to be true and correct, no offence is made out against the petitioner for the offence under Section 171-E IPC. The trial Court committed error while taking cognizance against the petitioner under Section 171-E IPC. Continuation of criminal proceedings basing on charge sheet, which is not legally enforceable certainly amounts to abuse of process of Court.

10. This court can quash the criminal proceedings under Section 482 Cr.P.C. in the following circumstances: (1) if the allegations made in the complaint do not constitute any offence much less the offence alleges to have been committed by the petitioner; (2) even if the allegations made in the complaint ex facie taken to be true and correct, there is no possibility of conviction of the petitioner; (3) if the registration of the case against the petitioner is prohibited by any law for the time being in force; or (4) if the registration of crime and continuation of investigation would amount to misuse of process of law.

11. Having regard to the facts and circumstances of the case and also the principle enunciated in **R.P.Kapoor v State of Punjab**^[1], **State of Haryana v Bhajan Lal**^[2], **V.Y.Jose v State of Gurajat**^[3] and **Teeja Devi v State of Rajasthan**^[4], I am of the considered view that continuation of proceedings against the petitioner-accused would certainly amount to abuse of process of Court.

12. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner-accused in C.C.No.275 of 2009 on the file of the Additional Judicial Magistrate of I Class, Tadepalligudem. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J

DATED: 10-03-2016

Hsd

^[1] AIR 1960 SC 866

^[2] AIR 1992 SC 604

[\[3\]](#) (2009) 3 SCC 78

[\[4\]](#) 2015 (1) ACR 564 (SC)