

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15168 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings in C.C. No.316 of 2014, on the file of VI Additional Judicial Magistrate of First Class, Guntur, in Cr.No.84 of 2014 of Prathipadu Police Station, Guntur Urban District, registered for the offence punishable under Sections 171-F and 188 of Indian Penal Code, 1860 (for short, 'I.P.C.') against the petitioner.

It is the case of the prosecution that the petitioner herein is a TDP contesting candidate from Prathipadu Constituency for the election 2014, which were scheduled to be held on 07.05.2014. The Election Officer promulgated an order during election, prohibiting to hold meetings in devotional places like temples and churches.

On 01.05.2014 at about 9.45 PM the petitioner visited the premises of the Thurupupalem Church and delivered a speech to influence at the campaign, which is rendered an object of divine displeasure of spiritual censure and he uttered some favours on caste basis. The same is witnessed by L.Ws.2 and 3. Thus, the petitioner allegedly committed the above offences. On the basis of news item published in news paper, VRO-II, Prathipadu Village, gave complaint and on the strength of the same registered a crime.

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The proceedings in C.C. No.316 of 2014 are challenged on two grounds, they are, the offence punishable under Section 171F and 188 IPC are non-cognizable; no permission was obtained from the Magistrate as required under Section 155(2) Cr.P.C. to investigate into the offence; and the police are incompetent to take cognizance of the offence in view of bar under Section 195 Cr.P.C. Therefore, the proceedings in the case cannot be proceeded with, as there is a technical non-compliance by the Police during investigation and in filing charge sheet, placed reliance on three judgments of this Court in **TUMMALA RAMA BRAHMAM & RAM AND ANOTHER V. THE STATE OF ANDHRA PRADESH REP. BY THE PUBLIC PROSECUTOR AND ANOTHER¹, S.PURNACHANDRA RAO AND ANOTHER v. STATE OF ANDHRA PRADESH AND ANOTHER², JASTI JAYALAXMI v. STATE OF ANDHRA PRADESH AND ANOTHER³** and unreported Judgment of this Court in CrI.P.No.5323 of 2009 (**N.T.RAMA RAO v. THE STATE OF A.P., REP. BY PUBLIC PROSECUTOR AND ANOTHER**) in support of his contention.

Undisputedly, the petitioner contested in election from Prathipadu Constituency, but he allegedly committed an offence punishable under Section 171F and 188 IPC, which are punishable with imprisonment by either description for a term which may extend to one year, or fine, or with both, and simple imprisonment for one month, or fine of Rs.200/-, or both, respectively. Therefore, the offence allegedly committed by the

¹ 2015 SCC Online Hyd 358

² 2014(2) ALD (CrI.) 674

³ 2014(2) ALD (CrI.) 682

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petitioner is non-cognizable and unless permission is obtained under Section 155(2) Cr.P.C., the police shall not investigate into a non-cognizable offence without the order of the Magistrate, having power to try such case, to commit case for trial.

In the present case, admittedly police did not obtain any permission as contemplated under Section 155(2) Cr.P.C. to investigate into the offence and it is a serious irregularity committed by the police, therefore, examination of the witnesses and recording their statements under Section 161 (3) Cr.P.C. by the police is a serious illegality.

The other ground is, to register a case in non-cognizable offence punishable under Section 188 of I.P.C. Section 195(1) (a) Cr.P.C. created an interdict to take cognizance of any offence punishable under Section 172 to 188 IPC (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or some other Court to which that Court is subordinate to enable the Court to take cognizance of the offence punishable under Section 171F and 188 IPC.

In the present case, charge sheet was filed by the Sub-Inspector of Police having no authority to grant permission for the public meeting, and therefore, taking cognizance by the police itself is an illegality.

A similar question was decided by this Court in **N.T.RAMA RAO's** case (unreported) and in **TUMMALA RAMA BRAHMAM's** case, it was held that the proceedings shall not be continued due to technical defect of obtaining prior permission under

Section 155(2) Cr.P.C. and taking cognizance on the complaint filed by V.R.O. and it is against purport of Section 195(1)(a) Cr.P.C.

Applying the principle laid down in the above judgments, this Court, while exercising power under Section 482 Cr.P.C., can quash the proceedings in CC. No.316 of 2014.

In **STATE OF HARYANA VS. BHAJAN LAL**⁴ the Apex Court laid down certain guidelines to quash the proceedings while exercising power under Section 482 Cr.P.C. Wherein, guideline No.6 is relevant, which says that where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious remedy to redress the grievance of the aggrieved party.

In the present case, there is a clear bar from registering the crime by the police in a non-cognizable offence without permission of the Magistrate concerned to try the offence as required under Section 155(2) Cr.P.C. and the complaint was not filed by the competent person as contemplated under Section 195(1)(a) Cr.P.C, and thereby guideline No.6 laid down by the Apex Court in **BHAJAN LAL** referred to supra, would directly applicable to this case.

Hence the proceedings in C.C. No.316 of 2014 on the file of VI Additional Judicial Magistrate of First Class, Guntur, shall

⁴ 1992 Supp (1) SCC 335

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not be continued as taking cognizance and filing charge sheet are illegal in view of law declared by the Court.

In the result, the proceedings in C.C. No.316 of 2014 on the file of VI Additional Judicial Magistrate of First Class, Guntur are hereby quashed by exercising power under Section 482 Cr.P.C.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26.10.2016
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