

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

CRL.P.NO.10286 OF 2016

ORDER

Heard the counsel for the petitioner/accused No.1 and the learned Additional Public Prosecutor for the respondents – State.

2. This petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.177 of 2016 on the file of III Additional Judicial First Class Magistrate, Rajahmundry, East Godavari district, registered against the petitioner /accused No.1 for the alleged offence punishable under Section 188 read with 34 IPC.

3. The allegation against the petitioner, who had filed nomination for contesting as MLA to Pithapuram Constituency, before the Mandal Revenue Officer, was that he came in procession for filing nomination and that either the managers of the procession or the petitioner, failed to produce the permission for taking out the procession and therefore, they have alleged to have committed the offence punishable under section 188 of IPC. Based on the complaint by the 2nd respondent – Mandal Parishad Development Officer, the police registered FIR No.94/2014 on the file of Police Station, Pithapuram East Godavari District for the said alleged offence and after investigation, filed charge sheet and the case is number as C.C.No.177/2016 on the file of III Additional Judicial First Class Magistrate, Rajahmundry, East Godavari District. For quashing the same, the present criminal petition is filed.

4. The learned counsel for the petitioner, as well as the learned Additional Public Prosecutor submitted that in the present case, the de facto complainant is not authorised by the Election Commission to lodge the complaint in this case and that the procedure contemplated under Section 195(1)(a) of Cr.P.C. has not been followed and, therefore, the investigation conducted, is in violation of the provisions of the Cr.P.C. and the trial court ought not have taken cognisance of the offence based on police report. The learned counsel submitted that a learned single Judge of this court considering similar allegations in the light of provisions under Sections 2(d) and 195(1)(a) of Cr.P.C. in CrI.P.No.1779/2010 dated 30.10.2014, quashed the proceedings against the petitioners therein, in exercise of the jurisdiction under Section 482 Cr.P.C. and allowed the criminal petition. For better appreciation, the

relevant portion of the order is extracted as under:

“8. A perusal of the above provision clearly demonstrates that no Court shall take cognisance 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.

9. Section 2(d) Cr.P.C. defines 'complaint'. A fascicular reading of Section 2(d) and Section 195(1) (a) Cr.P.C. and Section 188 IPC demonstrate that the concerned public servant has to file a complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure stated supra, would not be curable. There is no mention in the charge sheet that the de-facto complainant is authorised by the Election Commission to lodge the complaint in this case. Even assuming, but not conceding, that the de facto complainant is empowered to lodge the complaint, he has to follow the procedure contemplated under Section 195(1)(a) Cr.P.C. The material placed before the court clinchingly establishes that the de-facto complainant has not followed the due procedure. Any investigating conducted in violation of the provisions of Cr.P.C. is non-est in the eye of law. The Court ought not have taken cognisance of offence basing on the police report, which is non-est in the eye of law. The police have no right whatsoever to investigate into the matter and file report in so far as the offence under Section 188 IPC is concerned. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.P.C. while taking cognisance of offence under Section 195 IPC.

10. 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/A1 to A3.”

5. In view of the above decision of the learned single Judge of this court and having regard to the facts and circumstances of the case and the submissions of the learned counsel for the petitioner and the learned Additional Public Prosecutor, the proceedings in C.C.No.177/2016 on the file of III Additional Judicial First Class Magistrate, Rajahundry, East Godavari District, insofar as the petitioner / accused No.1 are hereby quashed and the criminal petition is accordingly allowed.

6. Miscellaneous petitions pending if any, shall stand closed.

18—07—2016

AVS