

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

Criminal Petition No.11377 of 2016

ORDER :

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Heard the learned counsel for the petitioners/accused Nos.2 to 5 and the learned Additional Public Prosecutor for the respondents.

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 the III Additional Judicial First Class Magistrate, Rajahmundry, East Godavari District, registered against the petitioners/accused Nos.2 to 5 for the alleged offences punishable under Section 188 read with Section 34 I.P.C.

The learned counsel for the petitioners, 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 Section 2(d) and 195(1)(a) of Cr.P.C. in CrI.P.No.1779 of 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 I.P.C. 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 I.P.C. 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 investigation 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 I.P.C. 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 I.P.C.

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.”

It is also represented that this Court by order, dated 18-07-2016 in CrI.P.No.10286 of 2016 quashed the proceedings in C.C.No.177 of 2016 on the file of the III Additional Judicial First

Class Magistrate, Rajahmundry, East Godavari District, in so far as the accused No.1 – petitioner therein.

In view of the above, the Criminal Petition is allowed quashing the proceedings in C.C.No.177 of 2016 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, East Godavari District, in so far as petitioners – accused Nos.2 to 5 are concerned.

Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M.S.K.JAISWAL

04th August, 2016.

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