

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.2404 OF 2010

ORDER:

1 This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/A.1 in C.C.No.293 of 2009 on the file of Judicial Magistrate of I Class, Palakol, West Godavari District.

2 The learned counsel for the petitioner submitted that the learned Magistrate should not have taken cognizance of offence under Section 188 IPC and Section 30 of Police Act.

3 Heard the learned Public Prosecutor.

4 A perusal of the record reveals that the petitioner is facing trial in C.C.No.293 of 2009 on the file of Judicial Magistrate of I Class, Palakol, West Godavari District for the offence punishable under Section 188 IPC and Section 30 of Police Act. A perusal of the record further reveals that on the basis of the report given by the Sub Divisional Police Officer, Narsapur, the Station House Officer, Palakol Police Station, registered a case in Cr.No.118 of 2009 for the offences under section 188 IPC and Section 30 of the Police Act. After completion of investigation, the investigating officer has filed the charge sheet against the petitioner for the offences under section 188 IPC and Section 30 of Police Act. The learned Magistrate has taken cognizance of the offences under Section 188 IPC and Section 30 of Police Act.

5 As per the allegations made in the charge sheet on 20.04.2009 at 7.30 pm the petitioner along with others organized dharna in front of Palakol Town Police Station in violation of the orders issued by the Sub Divisional Police Officer, Narsapur under Section 30 of Police Act regulating public assemblies and processions.

6 The point for consideration is whether the trial Court is justified in taking cognizance of the offence against the petitioner.

7 As per the prosecution version, the petitioner has violated the orders issued by the Sub Divisional Police Officer under Section 30 of Police Act. Disobedience of the orders duly promulgated by a public servant would attract the provisions of Section

188 IPC. No order issued by the Sub Divisional Police Officer under Section 30 of Police Act has been filed. It is apposite to extract hereunder the relevant portion of Section 195 (1) (a) Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offence 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 (45 of 1860), or

(ii) of any abetment of, 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;

8 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.

9 Section 2 (d) Cr.P.C. defines 'complaint'. A fascicular reading of Section 2 (d) and Section 195 (1) (a) Cr.P.C clearly manifest 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 to have taken cognizance 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.PC while taking cognizance of offence under Section 188 IPC.

10 In similar set of facts, this Court quashed criminal proceedings in Crl.P.Nos.10022, 10023 and 10811 of 2009 and Crl.P.No.1700, 1714 and 1779 of 2000 vide separate orders on each petition on 30.10.2014.

11 Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioner 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/A.1.

12 Accordingly, the Criminal Petition is allowed, quashing the proceedings against the petitioner/A1 in C.C.No.293 of 2009 on the file of Judicial Magistrate of I Class, Palakol, West Godavari District. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J

February 16, 2016

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