

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.2944 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/A1 to A38 in C.C.No.5 of 2009 on the file of the Court of the Judicial Magistrate of First Class, Anaparthi, East Godavari District, for the offences punishable under Section 132 of Representation of People Act and Sections 188, 341 and 506 read with 34 IPC.

2. The contention of learned counsel for the petitioners is three fold: (1) the allegations made in the complaint do not constitute any offence much less the offences alleged to have been committed by the petitioners; (2) the learned Magistrate has committed grave error while taking cognizance of the offence under Section 188 of IPC against the petitioners in view of the bar contained under Section 195 Cr.P.C; and (3) even if the allegations made in the complaint are *ex facie* taken to be true and correct, no case is made out against the petitioners for the offence under Section 132 of Representation of Peoples Act.

3. The learned counsel for the second respondent and the learned Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

4. The facts leading to filing of the present petition are as follows: The second respondent lodged a complaint to the Station House Officer, Biccavole Police Station, who in turn registered a case in Crime No.69 of 2009 for the offences punishable under Section 132 of Representation of People Act and Sections 188, 341 and 506 read with 34 IPC. After completion of the investigation, the Investigating Officer laid charge sheet against the petitioners/A1 to A38 for the offences under Section 132 of Representation of People Act and Sections 188, 341 and 506 read with 34 IPC. As per the allegations made in the charge sheet, on 23.4.2009 at about 5.00 P.M., the

petitioners herein conducted dharna on the main road near Polling Booth Nos.80, 81 and 82 of Biccavole and did not allow any person to go into the Polling Booths. It is further alleged that the petitioners obstructed polling from 5.00 P.M. to 8.00 P.M. The learned Judicial Magistrate of First Class has taken cognizance of the offence against the petitioners under Section 132 of Representation of People Act and Sections 188, 341 and 506 read with 34 IPC and numbered the charge sheet as C.C.No.5 of 20009 and issued summons.

5. To substantiate the arguments, the learned counsel for the petitioners 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;

6. 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.

7. The other submission made by the learned counsel for the petitioners is that no case is made out against the petitioners under Sections 341 IPC. To substantiate the argument, the learned counsel for the petitioners has drawn my attention to the ratio laid down by this Court in **Dr. Kodela Siva Prasad Rao v Koritala Venkata Ramanaiah** ^[1] wherein this Court held as follows:

32. A reading of the complaint and the sworn statements of the witnesses shows that the petitioners/accused who are allegedly heading the rasta roko had no intention to prevent the complainant and others travelling in the jeep to proceed further. Therefore, it cannot be said that the petitioners/accused said to have organized rasta roko had voluntarily obstructed the complainant and other occupants of the vehicle to proceed further. At the most it can be said that the petitioners/accused caused a little inconvenience to the occupants of the vehicle because the vehicle could not proceed further due to the rasta roko said to have been organized by the petitioners/accused.

33. Section 95 of IPC deals with such a situation wherein it has been stated that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. Even if any little inconvenience was caused to the complainant because of rasta roko said to have been organized by the petitioners / accused, it squarely comes within the ambit of Section 95 IPC. In the circumstances of the case, continuance of criminal proceedings against the petitioners / accused amounts to abuse of process of Court.

8. Normally, polling will commence in the morning at about 7.00 A.M. and complete by 5.00 P.M. Even if the allegations made in the charge sheet are taken to be true and correct, the petitioners made dharna on the main road near Polling Booth Nos.80, 81 and 82 of Biccavole on 23.4.2009 at about 5.00 P.M. i.e., after completion of polling time. When the polling time ends by 5.00 P.M., obstruction polling by the petitioners upto 8.00 P.M. is inherently improbable and absurd.

9. One of the other allegations made in the complaint is that the petitioners threatened the second respondent with dire consequences, which would attract the provisions of Section 506 IPC. It is not the case of the prosecution that the petitioners threatened anybody much less the *de facto* complainant. It is a settled principle of law that the court shall not take cognizance of offence without satisfying the basic ingredients of alleged offence. Even if the allegations made in the complaint, at their face value, are taken to be true and correct, no case is made out against the petitioners for the offence under Section 341 and 506 IPC.

10. The next question that falls for consideration is whether the petitioners committed offence punishable under Section 132 of Representation of People Act. For better appreciation of rival contentions, it is apposite to refer to Section 132 of Representation of People Act, which reads as follows:

132. Penalty for misconduct at the polling station.—(1)

Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer.

(2) The powers conferred by sub-section (1) shall not be exercised so as to prevent any elector who is otherwise entitled voting at that station.

(3) If any person who has been so removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

(4) An offence punishable under sub-section (3) shall be cognizable.

11. To attract the offence under Section 132 of Representation of People Act, the following ingredients are necessary:

- (1) if any person misconducts himself during the hours of polling;
- (2) if any person disobeys the lawful direction of the presiding

officer of polling station; or

- (3) if any person, who has been removed on the grounds of (1) or (2), re-enters the polling station without the permission of the presiding officer.

12. It is not the case of the second respondent that the petitioners entered into any one of Polling Booth Nos.80, 81 or 82 of Biccavole at any point of time much less on the date of election more particularly during the polling hours and disobeyed any lawful direction of the presiding officer. As observed earlier, the allegation against the petitioners is that on 23.4.2009, they conducted dharna on the main road near Polling Booth Nos.80, 81 and 82 of Biccavole. If really the petitioners entered into the Polling Station in contravention of the Code of Election Conduct or the circulars issued by the Election Commission of India, the Presiding Officer of the Polling Station might have informed the same to the concerned Police, who in turn might have taken necessary action. None of the Presiding Officers of Polling Booth Nos.80, 81 and 82 lodged the complaint to the Police. The allegations made against the petitioners are bereft of basic ingredients of Section 132 of Representation of People Act. In such circumstances, forcing the petitioners to face the rigour of criminal trial is justified or not is to be seen.

13. It is settled principle of law that the court has to exercise its inherent jurisdiction in rarest of rare cases. As per the principle enunciated in **R.P.Kapoor v. State of Punjab**^[2], **State of Haryana v. Bhajan Lal**^[3], **V.Y.Jose V State of Gurajat**^[4] and **Teeja Devi v. State of Rajasthan**^[5], where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence the court can quash the criminal proceedings against the accused while exercising inherent jurisdiction under Section 482 Cr.P.C.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases last cited supra, I am of the considered view that forcing the petitioners to face criminal trial is not at all justified and it is a fit case to quash the proceedings against the petitioners.

15. In the result, this Criminal Petition is allowed quashing the proceedings against the petitioners/A1 to A38 in C.C.No.5 of 2009 on the file of the Court of the Judicial Magistrate of First Class, Anaparthi, East Godavari District. As a sequel, the miscellaneous petitions, pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

March 31, 2016

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[\[1\]](#) 2006 (3) ALT (Cri.) 495 (A.P.)

[\[2\]](#) AIR 1960 SC 866

[\[3\]](#) AIR 1992 SC 604

[\[4\]](#) (2009) 3 SCC 78

[\[5\]](#) (2014) 15 SCC 221