

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.1499 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/Accused Nos.2 and 3 in C.C.No.329 of 2009 on the file of the Court of the VII Additional Judicial First Class Magistrate, Warangal.

2. The contention of the learned counsel for the petitioners is two fold: (1) The learned Magistrate committed grave error while taking cognizance of offence against the petitioners under Section 188 I.P.C. basing on a police report which is in violation of the provisions of Section 195 Cr.P.C.; (2) 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 offences punishable under Sections 171E and F I.P.C.

3. *Per contra*, the learned Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

4. A perusal of the record reveals that the Sub-Inspector of Police, Wardhannapet Police Station registered a case in Crime No.70 of 2009 for the offences punishable under Sections 171E, F and 188 I.P.C. After completion of the investigation, the Sub-Inspector of Police laid charge sheet against the petitioners and others for the above mentioned offences. The learned VII Additional Judicial First Class Magistrate, Warangal has taken cognizance of the offences against the petitioners and others for the offences punishable under Sections 171E, F and 188 I.P.C. and numbered the charge sheet as C.C.No.329 of 2009 and issued summons to the accused.

5. As per the allegations made in the complaint, on 14.04.2009, the Sub-Inspector of Police seized an amount of Rs.2,20,730/- from the

possession of accused No.1. It is further alleged that the petitioners gave money to accused No.1 for the purpose of distribution of the same to the voters.

6. The predominant contention of the learned counsel for the petitioners is that the learned Magistrate committed error while taking cognizance of the offence against the petitioners under Section 188 I.P.C. basing on a police report which is in violation of the provisions of Section 195 Cr.P.C.

7. To substantiate the argument, 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;

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

9. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.P.C. while taking cognizance of offence under Section 188 I.P.C.

10. 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/A.2 and A.3 under Section 188 I.P.C. is concerned.

11. The other submission made by the learned counsel for the petitioners is that 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 offences punishable under Sections 171E and F I.P.C.

12. Chapter IXA I.P.C. deals with offences relating to elections. A careful perusal of Section 171B I.P.C. clearly demonstrates that giving or accepting of gratification would amounts to bribery. Section 171E I.P.C. deals with punishment for bribery and Section 171F I.P.C. deals with punishment for undue influence or personation at an election. I have carefully scanned the charge sheet in order to ascertain whether the allegations made against the petitioners are *prima facie* sufficient to proceed further or not. Even if the allegations made in the complaint are taken to be true and correct, the petitioners handed over the money to accused No.1. As per the allegations made in the complaint, during the course of interrogation accused No.1 revealed that he received money from accused Nos.2 and 3. It is not the case of the prosecution that the police seized the money from the possession of accused Nos.2 and 3. Even assuming, but not conceding, that they seized the money from accused No.1, the same would not attract the provisions of Sections 171E and F of I.P.C. It is not the case of the prosecution that the petitioners were distributing

money on behalf of one of the contesting candidates in order to influence the voters. There is no allegation in the charge sheet that the petitioners were distributing money in order to influence the voters thereby to exercise their franchise in favour of a particular candidate. Even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioners/A.2 and A.3 for the offences punishable under Sections 171E and F of I.P.C.

13. The crucial question that falls for consideration is whether continuation of the criminal proceedings against the petitioners would amount to abuse of process of law and miscarriage of justice or not?

14. The learned counsel for the petitioners has drawn my attention to the judgment in **Shakson Belthissor Vs. State of Kerala and another**^[1], wherein the Hon'ble Apex Court at para Nos.14, 15 and 19 held as follows:

“14. The scope and power of quashing a first information report and charge sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

15. “5.....In **Nagawwa v. Veeranna Shivalingappa Konjalgi**, [(1976) 3 SCC 736], it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations (made) in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

‘(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support

of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like'."

19. "6. In **State of Haryana v. Bhajan Lal**, (1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused".

15. As per the principle enunciated in the case cited supra, even if the allegations made in the complaint *prima facie* do not constitute any offence much less the offence alleged to have been committed by the accused, the Court can quash the proceedings.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that continuation of the criminal proceedings against the petitioners eventually compelling them to undergo mental agony by facing the rigour of criminal trial certainly would amount to abuse of

process of law and miscarriage of justice. Therefore, it is a fit case to quash the proceedings against the petitioners/A.2 and A.3.

17. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioners/A.2 and A.3 in C.C.No.329 of 2009 on the file of the Court of the VII Additional Judicial First Class Magistrate, Warangal.

18. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 04.04.2016

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[\[1\]](#) (2009) 14 SCC 466