

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

Criminal Petition No.10400 of 2010

ORDER:

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This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C. seeking to quash proceedings in C.C.No.58 of 2010 on the file of Judicial Magistrate of First Class, Srungavarapu Kota, initiated against the petitioner/accused for the offences punishable under Sections 188, 283 read with Section 34 IPC, Section 32 of Police Act, 1861 and Rule II (1) (3) (4) of the Model Code of Conduct issued by the Election Commission of India.

The case of the petitioner in brief is that the petitioner herein being A-1 in C.C.No.58 of 2010 was a contesting candidate of Visakhapatnam Parliamentary Constituency for Telugu Desam Party in 2009 Elections. During the said elections, on 19-04-2009 the petitioner/A-1 alleged to have conducted a public meeting at Devi Bomma junction, S. Kota from 19-20 P.M. to 20.05 PM from the roof top of vehicle bearing No.AP-31-W-6668 in the presence of Tahsildar and Assistant Returning Officer, S. Kota and Ex-Chairman of Zilla Parishad, Vizianagaram and others, who were also arrayed as accused in the case. It is further alleged that when the Tahsildar and Assistant Returning Officer, S. Kota, asked them as to whether they got permission for conducting public meeting, for which they produced permission letter, wherein permission was accorded to hold public meeting near Old Bus Stand-vegetable market, S. Kota, whereas the meeting was being conducted at Devi Bomma junction and thereby not only causing obstruction for free flow of traffic and inconvenience to the general public but also violated the promulgated orders by changing the

place what was permitted to hold meeting. Basing on the report given by Tahsildar and Assistant Returning Officer, S. Kota, a case in Crime No.43 of 2009 for the offences punishable under Sections 188, 283 IPC and Section 32 of Police Act, 1861 was registered by the S. Kota Police Station.

Heard the learned counsel for the petitioner/accused and the learned counsel appearing for the Public Prosecutor.

Learned counsel for the petitioner-accused submits that the present complaint filed by the Tahsildar and Assistant Returning Officer, S. Kota is not maintainable for the reason that the alleged offences fall within the purview of Section 195 (1) (a) (i) Cr.P.C. and that the complaint has to be filed by the concerned Court or by such officer of the Court to whom that court may authorise, but the complainant herein, who is the Tahsildar and Assistant Returning Officer, S. Kota, is not a competent person to file the complaint nor did he got any authority to file the present complaint. He further stated that since the complaint was not filed by the competent person as required under Section 195 Cr.P.C., the proceedings are liable to be quashed on that ground alone. In support of his contentions, the learned counsel relied on a judgment rendered by this Court in W.P.No.30733 of 2015 dated 21-09-2015.

A bare perusal of the complaint lodged by the Tahsildar and Assistant Returning Officer, S. Kota shows that even though the petitioner and other accused had violated the permission accorded to hold meeting, the only violation that is alleged is that instead of holding a meeting at the permitted place, the same was being conducted at a different place, and thereby caused

obstruction for free flow of traffic and violated the promulgated orders.

A learned Single Judge of this Court in W.P.No.30733 of 2015 dated 21-09-2015, in a similar case of this nature, keeping in view the dicta laid down by the Apex Court in the decisions referred to therein, held that in a case where the complaint is not filed by the officer who promulgated the order or who is administratively subordinate to him, the very prosecution launched against the petitioner is neither maintainable nor the continuation of the same is permissible, in which event, the proceedings are liable to be quashed.

In the instant case, though the Tahsildar and Assistant Returning Officer, is a public servant, he is not a competent person to file the complaint as required under Section 195 Cr.P.C. Nor he got authority to file the complaint in such case. In view of above facts and circumstances and having regard to the authoritative judgments of the Supreme Court, I am of the view that in the absence of the complaint not being given by a competent person as required under Section 195 Cr.P.C., the proceedings in C.C.No.58 of 2010 on the file of Judicial Magistrate of First Class, S. Kota are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.58 of 2010 on the file of Judicial Magistrate of First Class, S. Kota initiated not only against the petitioner/accused but also other accused in the said case are quashed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M.S.K. JAISWAL, J

Date: 05-02-2016

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