

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 25618 of 2011

Order:

The petitioner worked as a School Assistant in Christhu Jyothi School, Mahaboobnagar during the period from 1990 to 2000. When the Headmaster of the School terminated the services of the petitioner irregularly, he challenged the said orders of termination in this Court. This Court, in Writ Petition No.1031 of 1995, set aside the order of termination and directed the School to reinstate the petitioner with back wages. The petitioner submits that in view of the said incident, the Headmaster lodged a complaint against him in Crime No.29 of 1997. The petitioner requested the Bishop of Kurnool to intervene in the matter and withdraw the said complaint, but the complaint was not withdrawn. Ultimately, the case was tried in CC No.10 of 2000 by the Judicial Magistrate of First Class, Mahaboobnagar and the petitioner was acquitted. Later on, the petitioner filed OS No.18 of 2005 on the file of the I Additional District Judge, Mahaboobnagar, seeking damages of Rs.32,50,000/- for malicious prosecution and the same was decreed for an amount of Rs.1,00,000/-, by judgment and decree dated 13.10.2008. In connection with the said incident, the petitioner lodged two complaints on 15.12.1999 and 16.12.1999 in the Rural Police Station, Mahaboobnagar. In respect of the first complaint dated 15.12.1999 the Sub-Inspector of Police filed charge sheet in STC No.168 of 2000 on 12.02.2002, but in respect of Crime No.222 of 1999, in pursuant to the complaint dated 16.12.1999, a final report was submitted as false. The said final report was returned, since no notice was given to the petitioner. In spite of several representations of the petitioner, the final report was not submitted and in that connection the

petitioner submitted a representation to the respondents 1 and 2 seeking sanction for prosecution of the fourth respondent under Section 197 Cr.P.C on 30.06.2010. When no orders were passed by the second respondent, the present Writ Petition was filed seeking a direction to the second respondent for partially keeping the petition filed by the petitioner without disposing of the same since one year as arbitrary and illegal and for a consequential direction to the second respondent to give sanction order to prosecute the Sub-Inspector of Police, M. Malla Reddy, Rural Police Station, Mahaboobnagar.

2. The said Sub-Inspector of Police is now promoted as Deputy Superintendent of Police and he got himself impleaded as fourth respondent in the present Writ Petition, as per the orders in WPMP No.5148 of 2012, dated 28.02.2013.

3. When this matter came up for consideration before this Court, this Court asked the petitioner who is appearing as party-in-person, how the present Writ Petition is maintainable against the second respondent who is not the competent authority under Section 197 Cr.P.C. for sanctioning prosecution of the fourth respondent. His attention was drawn to Section 197 of Cr.P.C, which reads as follows.

“197. Prosecution of Judges and public servants -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.- For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, Section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the

maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

4. After reading the same, the party-in-person wanted to pursue the representation addressed to the first respondent and liberty is accordingly given to the petitioner to pursue the same. But, in view of the nature of the relief sought in the Writ Petition coupled with the averments made in the Writ Petition, the relief sought for by the petitioner in the present Writ Petition cannot be granted, however, liberty is given to the petitioner to pursue his remedy against the first respondent.

5. With the above observation, the Writ Petition is dismissed.

However, in the circumstances, no costs.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.
Date: 31.03.2016
Nsr

RAMALINGESWARA RAO, J.