

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

Criminal Petition No.13288 of 2010

ORDER:

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This Criminal Petition is filed by the petitioners/accused under Section 482 Cr.P.C. seeking to quash proceedings in C.C.No.237 of 2009 on the file of II Additional Judicial Magistrate of First Class, Ongole, initiated against the petitioners/accused for the offences punishable under Sections 171 (c) and 188 and Section 127 of Representation of Peoples Act and Section 32 of the Police Act.

The case of the petitioners in brief is that the petitioners herein being the accused in C.C.No.237 of 2009 are alleged to have conducted a public meeting on 01-04-2009 at 22.20 hours at Thata Lakshmi Prasad Kalyana Mandapam in view of ensuing forthcoming elections 2009, in violation of the conditions of the election Code of Conduct promulgated by Election Commissioner and a case in Crime No.145 of 2009 was registered for the offences punishable under Sections 188, 171 (c) IPC and Section 127 of the Representation of Peoples Act by I Town Police Station Ongole.

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

Learned counsel for the petitioners-accused submits that the allegations of the complaint do not attract the ingredients of the offences alleged and that no unofficial witness nor any of the members, who attended the meeting, was cited as a witness in the charge sheet. The allegations in the complaint, *prima facie*, have

not made out any case much less the offences alleged. He further contends that the person who filed the complaint is neither a competent person nor a public servant, who promulgated the orders as required under Section 195 Cr.P.C.

A bare perusal of the material on record, *prima facie*, shows that the petitioners/accused alleged to have conducted a meeting for the ensuing forthcoming elections in 2009 and thereby violated the promulgated orders. The person who filed the complaint is neither a competent person nor a person, who promulgated the orders, and therefore, the complaint filed by the police officer, who is not a competent person, is not maintainable. The complaint does not show whether there is any obstruction, annoyance or injury caused to the person who lawfully empowered to promulgate the order or caused any disobedience or tend to cause danger to human life in view of conducting of the meeting. Therefore, in the absence of establishment of any specific overt acts of the offences alleged, no proceedings initiated against the petitioners/accused can be continued. Further, it is to be noted that a learned Single Judge of this Court in a similar case of this nature in W.P.No.30733 of 2015 dated 21-09-2015 held that in a case where the complaint is not filed by the public servant concerned, the very proceedings launched against the petitioner is neither maintainable nor the continuation of the same is permissible. In view of the facts stated above, the proceedings initiated against the petitioners/ accused are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.237 of 2009 on the file of II Additional Judicial Magistrate of First Class, Ongole, initiated against the petitioners/accused 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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5.2.2016

