

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.2197 of 2010

ORDER:

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This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/Accused Nos.1 to 12 in C.C.No.1388 of 2009 on the file of the Court of the Additional Judicial Magistrate of First Class, Karimnagar.

2 The contention of the learned counsel for the petitioners is three fold: (1) The learned Magistrate ought not to have taken the 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) The allegations made in the complaint do not constitute the offences much less the offences punishable under Sections 143, 171-C and 149 I.P.C.; (3) The continuation of the criminal proceedings against the petitioners would amount to abuse of process of Court, therefore, it is a fit case to quash the proceedings.

3 *Per contra*, the learned Public Prosecutor submitted that the petitioners have committed the offences punishable under Sections 141 and 149 I.P.C. He further submitted that the petitioners formed into an unlawful assembly with a common object to violate the model code of conduct.

4 A perusal of the record reveals that the Station House Officer, LMD Colony Police Station, Karimnagar, registered a case in Crime No.122 of 2009 under Sections 143, 171-C and 188 read with 149 I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the petitioners for the above mentioned offences. The learned Additional Judicial Magistrate of First Class, Karimnagar, after satisfying himself with the material placed before him, has taken cognizance of the offences against the petitioners

under Sections 143, 171-C and 188 read with 149 I.P.C. and numbered the charge sheet as C.C.No.1388 of 2009 and issued summons to the accused.

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

8 Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioners would certainly amount to abuse of process of Court. 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.1 to A.12 under Section 188 I.P.C. is concerned.

9 The other submission made by the learned counsel for the petitioners is that the allegations made in the complaint do not constitute the offences much less the offences punishable under Sections 143, 171-C and 149 I.P.C. To substantiate the argument, the learned counsel for the petitioners has drawn my attention to Section 171-C I.P.C. For better appreciation, it is not out of place to extract the relevant provision of Section 171-C I.P.C., which is as follows:

“171-C. Undue influence at elections.--

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever-

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.”

10 In order to convict a person under Section 171-C I.P.C., the prosecution has to establish that the accused influenced the voters in one way or other. Nowhere it is mentioned in the charge sheet that the petitioners influenced the voters. Section 141 I.P.C. deals with unlawful assembly, whereas Section 149 I.P.C. deals with common

object. In order to convict a person under Sections 141 and 149 I.P.C., the prosecution has to establish that the accused formed into an unlawful assembly with one of the common objects set out in Section 141 I.P.C. The only allegation made against the petitioners is that they have violated the model code of conduct. The charge sheet is silent with regard to the particular way of violating the model code of conduct by the petitioners. Even assuming, but not admitting, that the petitioners have violated the model code of conduct, the competent person to initiate criminal proceedings is the returning officer or any other person authorized by the returning officer of that constituency. 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 143, 171-C and 149 I.P.C. In such circumstances, continuation of criminal proceedings against the petitioners certainly would amount to abuse of process of Court.

11 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.1 to A.12.

12 Accordingly, this Criminal Petition is allowed quashing the proceedings against the petitioners/A.1 to A.12 in C.C.No.1388 of 2009 on the file of the Court of the Additional Judicial Magistrate of First Class, Karimnagar.

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

T. SUNIL CHOWDARY, J

Date: 23.02.2016

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