

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8498 OF 2017

ORDER:

Heard learned counsel for the petitioners/A1 to A4 of C.C.No.89 of 2015, pending on the file of Chief Metropolitan Magistrate, Visakhapatnam, taken cognizance for the offence punishable under Section 153-A IPC and Clause – I (3) of Model Code of Conduct of Election Commission of India, which speaks 'there shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda' and said violation, from the report of the duty Sub-Inspector of Police, Flying Squad, is the cause in registering the crime.

2. The police, after investigation, filed the final report, that was taken cognizance for the said offence supra by the learned Chief Metropolitan Magistrate and the same is now impugned.

3. Leave about the merits, the main impugnement is from the bar under Section 196(1)(a) of Cr.P.C. to take cognizance by the Magistrate for want of previous sanction of the Central Government or of the State Government, as the case may be.

4. Having regard to the above and from want of sanction can be raised by accused at any stage as per the settled law, though that is not a bar for the trial court to take cognizance after filing of any previous sanction afresh, the petition is

allowed to the extent of setting aside the cognizance order by restoring the final report before the court by direction to the respondent – SHO, representing the State, to obtain sanction and file the same before the learned Magistrate if at all to take cognizance.

5. Accordingly and with the above direction, this criminal petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

25.10.2017
SS

DR.B.SIVA SANKARA RAO, J

