

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.4334 of 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner/A5 in C.C. No.72 of 2009 on the file of the Court of Additional Judicial First Class Magistrate, Vayalpad, Chittoor District.

2. Heard the learned counsel for the petitioner and learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. A perusal of the record reveals that the Sub-Inspector of Police, Vayalpad Police Station lodged a complaint to the Station House Officer, Vayalpad Police Station, who in turn registered a case in Crime No.60 of 2009 for the offences under Sections 171E, 171B, 188 and 506 read with 34 IPC and Section 123(2) of Representation of Peoples Act (for short, the R.P. Act) against the petitioner and others. After completion of investigation, the Station House Officer laid charge sheet against the petitioner and others under Sections 171E, 171B, 188 and 506 read with 34 IPC and Section 123(2) of the R.P. Act. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of the offences against the petitioner and others under the above referred sections of law and issued summons to the petitioner and others.

4. The learned counsel for the petitioner submitted that the offence under Section 171E IPC is non-cognizable but the trial court, without applying its mind, has taken cognizance of offence in a routine manner. He further submitted that even if the

allegations made in the complaint are *ex facie* taken to be true and correct, no offence is made out against the petitioner under Section 506 IPC and Section 123(2) of the R.P. Act.

5. As per the allegations made in the charge sheet, on 16.4.2009, the petitioner along with others was found distributing money to the villagers on behalf of Praja Rajyam Party. A perusal of the record reveals that the Police seized Scorpio Van bearing No.PY 01 AS 6669, cash of Rs.10,900/- and pamphlets. It is needless to say that Section 171E IPC is non-cognizable offence. It is a settled principle of law that in case of non-cognizable offence, the Investigating Officer is not authorised to investigate the matter without the permission of the court in view of Section 155(2) Cr.P.C. It is not the case of the prosecution that the Investigating Officer has obtained necessary permission from the concerned Magistrate before investigating into the matter.

6. The F.I.R. was registered under Section 123(2) of the R.P. Act. The charge sheet was filed under Section 123(e) of the R.P. Act. There is no sub-clause (e) to Section 123 of the R.P. Act. At this point of time, learned Public Prosecutor submitted that there may be some typographical mistake while preparing the charge sheet. Be that as it may, even if the allegations made in the charge sheet are *ex facie* taken to be true and correct, they do not constitute the offence much less the offence alleged to have committed by the petitioner/A5 under Section 123(2) of the R.P. Act.

7. Disobedience of the orders duly promulgated by a public servant would attract the provisions of Section 188 IPC. Even as

per the allegations made in the complaint, no such order is said to have been promulgated by a Public Servant. It is apposite to extract hereunder the relevant portion of Section 195 (1) (a) Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offence 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 (45 of 1860), or

(ii) of any abetment of, 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;

A perusal of the above provision clearly demonstrates that no Court shall take cognizance of offences under Sections 172 to 188 IPC except on the complaint in writing by a public servant concerned or some other public servant to whom he is administratively subordinate.

8. Admittedly the concerned Election Authority has not submitted complaint to the court. Section 2(d) Cr.P.C. defines ‘*complaint*’. A fascicular reading of Section 2(d) and Section 195(1)(a) Cr.P.C. demonstrate that the concerned public servant has to file complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure stated supra, would not be curable. The court cannot take cognizance of offence basing on the police report. The trial court has not considered the scope of Sections 171E, 171B and 188 IPC and Section 123(2) of the R.P. Act before taking cognizance. Therefore, the proceedings against the petitioner/A5 in

C.C. No.72 of 2009 on the file of the Court of Additional Judicial First Class Magistrate, Vayalpad, Chittoor District are non-est in the eye of law.

9. Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioner 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 petitioner.

10. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/A5 in C.C. No.72 of 2009 on the file of the Court of Additional Judicial First Class Magistrate, Vayalpad, Chittoor District are quashed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

Date: 14.06.2017
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T.SUNIL CHOWDARY, J

