

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.3518 of 2011

ORDER :

This petition is filed under Section 482 of Cr.P.C. to quash the charge-sheet in C.C. No.777 of 2010 on the file of the Additional Judicial First class Magistrate, Narsapur, West Godavari District.

2. The contention of petitioners is that to make out an offence under Section 188 read with Section 34 I.P.C. the 2nd respondent has not produced when the Election Commission of India promulgated an order and that the taking of cognizance by the Court is contrary to provisions of Section 195(1) of code of criminal procedure.

3. On the other hand, the learned Public Prosecutor contended that the Election Commissioner of India decided to hold general elections to parliament as well as to the State assemblies of all States including Andhra Pradesh on different dates and promulgated an order. The petitioners along with some other supporters, while the model election code is in force, started procession from 12 noon onwards, carried from Pathapadu to Narsapur for filing nomination for the congress party to No.177 Narsapur assembly constituency without prior permission.

4. A perusal of the record goes to suggest that the first petitioner is the resident of Kalagampudi village of Elamanchili Mandal. The 2nd petitioner is the resident of Perupalem South Village. The 3rd petitioner is resident of Kanta Village and 4th petitioner is resident of Pathapadu

village. A case in crime No.56 of 2009 was registered on 3.4.2009 basing on the report of the 2nd respondent for the offence under Section 125-A of R.P. Act and Section 188 read with Section 34 I.P.C. The complainant is working as Sub-Collector, Narsapur, who is returning officer of No.177 Narsapur assembly constituency. While so, on 2.4.2009, the petitioners along with some other supporters started procession at 12 noon onwards and the procession carried from Pathapadu to Narsapur on road for filing petitioner No.1's nomination for congress party to the No.177 Narsapur assembly constituency without obtaining any permission from the Sub-Divisional Officer, Narsapur. The Sub-Collector, Narsapur, is the returning officer of No.177 Narsapur assembly constituency. The Election Commissioner of India who is a public servant as defined under Section 21 of I.P.C. had decided to hold general elections to the Parliament and assemblies of all States including the State of Andhra Pradesh on different dates and promulgated orders by model election code of conduct in respect of elections which is in force. While so, the procession was taken on 2.4.2009. The Sub-Inspector of Police, Mogalthur Police Station, basing on the report of Sub-Collector, Narsapur, who was the returning officer, registered crime No.56 of 2009 under Section 125-A of R.P. Act and Section 188 read with Section 34 of I.P.C. of Mogalthur Police Station on 3.4.2009 and investigated the case and filed the charge-sheet and the same was taken on file and numbered as C.C.No.777 of 2010.

5. In the case of *Paiaavula Keshavulu v. State of Andhra Pradesh and another*¹ this Court observed that the prosecution under Section 182 I.P.C. must be on complaint in writing by the Tahsildar (public servant). In view of that absolute bar against the Courts for taking cognizance of the offence punishable under Section 182 I.P.C., except in the manner provided by Section 195 of Cr.P.C., the same is equally applies to the offence under Section 188 I.P.C. also. In the said case there is no complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, it is held that in view of the bar under Section 195 Cr.P.C. the learned Magistrate ought not to have been taken the cognizance of the offence punishable under Section 188 I.P.C. on the report submitted by the Sub-Inspector of Police, Gooti Police Station.

6. In another decision in the case of *Kottu Satyanarayana v. State of Andhra Pradesh*² this Court held that Sections 195 to 199 Cr.P.C. act as an exception to the general rule that any person can set the criminal law in motion. Sections 195 to 199 Cr.P.C. would disclose that in respective of certain offences, criminal law can be set into motion by certain qualified persons only. The present offence under Section 188 I.P.C. is one such offence and the person who is entitled to set the criminal law in motion is detailed in Section 195 Cr.P.C. The *non-obstante* clause with which Section 195 Cr.P.C. begins, grafts an express bar on the courts to take cognizance of, among other offences,

¹ 2016(1) ALD (CrL.) 571

² 2015(1) ALD (CrL.) 572

the offence under Section 188 I.P.C. without following the procedure prescribed therein. Section 195 Cr.P.C. clarifies that a complaint has to be lodged by the concerned public servant before the Magistrate for taking cognizance of the offence under Section 188 I.P.C.

7. From the above decisions it is very clear that the written complaint must be lodged by a public servant concerned or his superior officer. In the instant case the Election Commissioner of India, who is a public servant as defined under Section 21 I.P.C., promulgated the orders/model election code of conduct in respect of the elections scheduled to be held on 23.4.2009. The returning officer of No.177, Narsapur assembly Sri D.Ronald Rose, I.A.S., submitted a report to the Sub-Divisional Officer, Narsapur alleging that Sri M.V.Prasada Raju – 1st petitioner herein has taken a procession from Pathapadu to Narsapur without prior permission of the Sub-Divisional officer. The said D.Ronald Rose, I.A.S. officer is a public servant as defined under Section 21 I.P.C. who is competent to lodge a complaint. The investigation was completed and charge-sheet was filed in the competent Court and the Court has taken cognizance of the offence. The complaint which is in writing made by the public servant is strictly in accordance with requirements of Section 195 Cr.P.C. and he is the competent to set the criminal law in motion as detailed in Section 195 Cr.P.C. The material on record clearly goes to show that there is *prima facie* material to show that the petitioner knowingly disobeyed the promulgation orders which make out an offence as defined under

Section 188 I.P.C. and I do not find any ground to quash the charge sheet in C.C.No.777 of 2010 on the file of the Additional Judicial First Class Magistrate, Narsapur, West Godavari District.

8. In the result, the Criminal Petition is dismissed.

9. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

12th October, 2017

skmr

