

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION NO.7085 OF 2017

ORDER:

Heard the counsel for petitioners-A1, A3, A4 and A5 of C.C.No.13 of 2016 on the file of the Special Judicial First Class Magistrate (Excise), Eluru, West Godavari District and also the learned Public Prosecutor representing the State.

Learned Magistrate taken cognizance for the offences punishable under Sections 341 and 188 read with Section 34 of the Indian Penal Code (IPC) and Section 125 of the Representation of Peoples Act ("the Act" for brevity). It is one of the contentions that there is a bar to take to police to register Crime No.120 of 2014 and investigating and to file final report for the cognizance pursuant to which taken by the learned Magistrate, by virtue of Section 195 of the Code of Criminal Procedure (Cr.P.C.). In fact, a perusal of the said provision shows that it is applicable to penal Section under Section 188 IPC. Suffice to say the cognizance other than by private complaint is unsustainable by virtue of specific bar under Section 195 Cr.P.C. However, coming to Section 125 of the Act, though it is cognizable, as per Schedule-II of Cr.P.C. it is a non-cognizable offence. Once Section 341 IPC is a cognizable offence by virtue of Section 155(4) Cr.P.C., for the police to investigate, thereby there is nothing to quash the offence under Section 341 IPC and Section 125 of the Act even by placing reliance on the expression of another Bench on Thota Chandra Sekhar, who is A2 in relation to the same Calendar Case in Criminal petition No.15248 of 2016 dated 26.10.2016. Needless to say if at all any other contentions as part of defence available to

the accused-petitioners they can urge the same before the lower Court including by filing application under Section 251 Cr.P.C. for the lower Court to consider on own merits vide decision in **Bhushan Kumar v. State (NCT of Delhi)**¹.

Accordingly, the Criminal Petition is partly allowed. Miscellaneous petitions, if any, pending shall stand closed.

(Dr. B.SIVA SANKARA RAO, J)

16th August 2017
RRB



¹ (2012)5 SCC 424