

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.7761 of 2011 AND 10159 OF 2014

COMMON ORDER:

Crl.P.No.7761 of 2011 is filed by petitioners, who are A1 to A22, for quash of proceedings in C.C.No.552 of 2009 on the file of Additional Judicial Magistrate of First Class at Jaggaiahpet, Krishna District, while Crl.P.No.10159 of 2014 is filed by the petitioners, who are A23 to A44, for quash of proceedings in the aforesaid CC. The offences alleged are under Sections 143, 147, 160, 188 r/w 149 Indian Penal Code.

2. Since both the criminal petitions arise out of the same CC, the petitions are being disposed of by this common order.

3. Heard the counsel for the petitioners and the Public prosecutor appearing for the 1st respondent. None appears for the 2nd respondent in spite of notice in CRLP.No.10159 of 2014.

4. The occurrence report, which is given by the Sub-inspector of Police, Vatsavai Police Station, shows that though there was a promulgation order issued under Section 144 Cr.P.C. by the Tahsildar, all the petitioners were armed with iron rods and stick with a common intention and were throwing stones, creating obstruction to public law and order, thereby violating the promulgation order issued under Section 144 Cr.P.C.

5. The counsel for the petitioners contends that none of the offences alleged against the accused are attracted to the allegations. He contends that when there is no order of

promulgation under Section 144 Cr.P.C., the question of petitioners committing an offence under Section 143 IPC does not arise, as the contents of the occurrence report are that they have obstructed the police from implementing the promulgation order issued under Section 144 Cr.P.C.

6. The Public Prosecutor was directed to obtain instructions as to whether there was any such promulgation order issued under Section 144 Cr.P.C. He reports that no such order was given by the Mandal Revenue Officer and no such promulgation order seems to have existed, as on the date of the alleged offence. Hence, in view of the above, the offence under Section 143 IPC cannot be sustained.

7. In order to attract an offence under Section 147 IPC, there should be an unlawful assembly and force should have been used by them in prosecution of their common objection. The definition of 'Unlawful Assembly' under Section 141 IPC does not take within its purview the acts of the accused. The first and second clauses do not get attracted because of there being no promulgation order under Section 144 Cr.P.C. So also, Clauses 3 to 5, as the allegations in the occurrence report are not that they have committed any of the acts, which would fall under Clauses 3 to 5. Hence, Section 147 IPC also does not get attracted.

8. Section 160 IPC prescribes punishment for committing Affray, which, as per Section 159, means that when two or more persons, by fighting in a public place, disturb the public peace.

The allegations are not that there was any fight among the petitioners. Hence, Section 160 IPC also cannot be sustained.

9. As regards, Section 188 IPC, there should be a promulgation order and the act of the accused should be in violation of such order. As already observed, no promulgation order was said to have been issued. Hence, Section 188 IPC also does not get attracted to the facts of the present case.

10. In view of the above, continuation of further proceedings in the above CC against the petitioners would only result in abuse of process of law.

11. With the above observations, the criminal petitions are allowed and the proceedings in C.C.No.552 of 2009 on the file of Additional Magistrate of First Class at Jaggaiahpet, Krishna District, against the petitioners, in the present criminal petitions, are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 21, 2017
LMV

T. RAJANI, J