

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2520 OF 2017

ORDER:

Requesting to quash the proceedings in RoC.No.A4/4977/2016 in M.C.No.03 of 2016 issued by the Sub-Collector & Sub-Divisional Magistrate, Madanapalle, Chittoor District, the present Criminal Petition is filed to exercise the inherent power under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The petitioners have been challenging the Summons dated 24.01.2017 issued under Section 107 of the Code by the 2nd respondent requiring them to appear on 31.01.2017 at 10.00 a.m. in the office of the 2nd respondent to show-cause as to why the petitioners should not be ordered to execute a bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) each with two sureties, for the like sum for keeping the peace for a period of one year.

3. Heard Sri Mahadeva Kanthrigala, the learned counsel for the petitioners, who are arraigned as respondents 15, 29, 32 & 37 respectively of A-Party, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The main submissions of the learned counsel for the petitioner have been that the petitioners were never involved in the crimes alleged by the 3rd respondent; the 2nd respondent failed to follow the procedure laid down under Section 309 of the Code; the

2nd respondent alone have to decide the proceedings and ought not to have authorized his Camp Clerk and directed to order the petitioner to appear before the Authorized Tahsildars of various Mandals; initiation of proceedings is illegal, invalid and in violation of the procedure prescribed in law and the instant case is squarely covered by an order of this Court in **G. Rajashekar Reddy v. State of A.P.**¹ .

5. The learned counsel for the petitioners would also submit that the 1st petitioner is working as School Assistant in Biological Science in Z.P. High School (Urdu) Gurramkonda Village and received the State Award on 9.6.2016 and doing Part-time Ph.D Research Scholar in Sri Venkatewara University, Tirupati; the 2nd petitioner is working as Secondary Grade Teacher in M.P.P.S. School, Cherlopalle of Gurramkonda Mandal and not involved in any case and he was on duty on that date and he has also received a District Award and he is not the President of Masjid of Quba as alleged in Section 107 Cr.P.C. proceedings and some other Mukthiyar was the President; the 3rd petitioner is resident of Gurramkonda Village, working as School Assistant in Z.P. High School, Mahal, Kalikiri Mandal and he was in Badibata Programme from 9.6.2016 to 11.6.2016, 4th petitioner is the native of Gurramkonda Village and working as School Assistant in Z.P. High School (Urdu) in Khajipet, V. Kota Mandal, which is situated at a distance of 150 kms., to Gurramkonda and he was

¹ 2005 (3) ALT (Cri.) 327 (A.P.)

undergoing training from 4.6.2016 to 13.6.2016 at DSC Training Centre. Certain other averments are mentioned in the petition, which, of course, are unnecessary to advert to as they are ancillary in nature.

6. The learned Assistant Public Prosecutor for the State of Andhra Pradesh would submit that summonses issued by the 2nd respondent, impugned herein, would satisfy the requirements with relevant details. It is his submission that no harassment has been caused to the petitioners and that, that stand taken by the petitioners is incorrect. The petitioners belong to A-Party. There are two groups, the first is “Thablic-e-Jamath” and other is “Ahle Hades”. Two crimes which have been registered against each group on the complaints lodged by the opposite group accused persons, and, therefore, it is not a fit case to quash the Summons, as requested.

7. The petitioners have filed copy of Summons issued under Section 107 of the Code by the 2nd respondent - Sub-Collector. The petitioners have not chosen to file any other documents, and, they mainly relied on the decision rendered by a learned Single Judge of this Court in **G. Rajashekar Reddy** (1 supra).

8. As can be seen from the petition averments as well as the details given in the Summons, which copies are filed by the petitioner, it is clear that two crimes against each group on the complaints lodged by accused persons belonging to opposite group have been registered. The relevant details have been mentioned in paragraph-3 of Criminal

Petition. The crimes registered against Thablic-e-Jamath Group is in Crime No.30 of 2016 under Sections 341 & 506 of IPC read with Section 34 of IPC and the second is C.C. No.288 of 2016 for the charges under Sections 341, 323 & 506 of IPC read with Section 34 of IPC.

9. So far as the other group i.e., 'Ahle Hades' is concerned, Crime No.31 of 2016 is registered for the offences punishable under Sections 341 & 323 of IPC read with Section 34 of IPC and C.C. No.289 of 2016 for the charges under Sections 341, 323 & 506 of IPC read with Section 34 of IPC.

10. The complaint in the present case was lodged by the 3rd respondent with the 2nd respondent. Copy thereof is not filed in the material papers, as already mentioned copy of Summons issued to one of the petitioners has been filed.

11. To look at the ingredients and to examine the summons now filed by the petitioners as to whether the ingredients of Section 107 of the Code are satisfied or not, it would be apt to extract Section 107 of the Code, which reads thus:

“107. Security for keeping the peace in other cases:- (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this Section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.”

12. The invariable ingredient contemplated by Section 107 of the Code is, on receipt of information that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity and to satisfaction of the Executive Magistrate to form an opinion that there is sufficient ground for proceeding, he may require such person to show cause why he should not execute a bond etc. Thus, a reasonable apprehension is sufficient to form an opinion by the 2nd respondent to issue summons. When examined in the light of the fact situation referred to in the above, that there have been two crimes registered against each group and the petitioners belong to A-Party in the proceedings under Section 107 of the Code, sufficient to arrive at that *prima facie* allegations are occurring to justify issue of summonses by the 2nd respondent.

13. The learned counsel for the petitioners, no doubt, places reliance in **G. Rajashekar Reddy** (1 supra) wherein this Court held in paragraphs 10 and 12 thus:

“10. The Courts have applied the principles governing the exercise of powers under Section 107 of Cr.P.C., by the Magistrate and wherever the summons or show cause notice was issued after initiating the proceedings on some vague allegations, the proceedings were struck down. Wherever the particulars of information, which leads the Magistrate to come to the conclusion that persons are likely to commit breach are not given, the Courts have struck down. Likewise wherever the substance of information was not set forth or the amount of bond to be executed is not

mentioned, the Courts have held such show cause notices to be defective. As seen from the summons except reproducing the words and phrases mechanically no details are given in the summons. Mere assertion or allegation that named persons belonging to political parties of different groups are likely to indulge in illegal activities detrimental to maintain, law and order or that such named persons are likely to commit breach of peace and disturb the public tranquillity, are not sufficient to confer any power on the Executive Magistrate to issue summons under Section 107 of Cr.P.C., read with Sections 111 and 113 of Cr.P.C. The submission of the learned Public Prosecutor based on the four causes in the First Information Report/Report of the Sub Inspector would by themselves, do not attract the provisions of Chapter VIII of Cr.P.C., because as discussed infra, action was initiated with biased mind. Therefore, it must be held that the proceedings issued against the petitioners are unsustainable.

11.

12. The above provision disables a magistrate to try or commit for trial in case in which the magistrate is personally interested. A magistrate shall not try his own cause, is the binding principle on every magistrate and a judge; whether the trial judge or appellate judge. The provision not only disqualifies magistrate to try a case when he is personally interested but also prohibits such magistrate from trying such a case. In such an event as a necessary corollary under Section 461 of Cr.P.C., the entire proceedings would be vitiated. In the very nature of things under Chapter VIII of Cr.P.C., it is the Executive Magistrate who is competent to direct an anti social person to execute a bond with sureties for good behaviour for a specified period. This, a magistrate may do only on receipt of information in respect of a person within the local jurisdiction limits of magistrate. If the magistrate himself or herself is the informant or the victim of alleged anti social activities or attempts to contravene the specified provisions mentioned in Sections 108 and 110 of Cr.P.C., can it be said that the magistrate exercised the power validly?"

14. In the present case, unlike in **G. Rajashekar Reddy** (1 supra), summonses would clearly indicate the satisfaction of the 2nd respondent to form an opinion to proceed with issue of summons besides containing the date and time of appearance, execution of bond for Rs.50,000/- each with sureties for the like sum. Thus, when invariable ingredients of Section 107 of Cr.P.C. have been found in the Summonses impugned, certainly, it cannot be said that issue of summonses is nothing but the abuse of process of law.

15. The petitioners, no doubt, mention that Camp Clerk used to require them to appear before the different Tahsildars, but no material is placed in regard thereto. Even otherwise, a direction can be given to the 2nd respondent to dispose of the proceedings by fixing timeline by following the procedure laid down by the provisions of Section 107 of the Code. The ground that the petitioners have bagged State Awards so far as the petitioners 1 and 2 are concerned, they are all public servants and it would not, at this stage, aid them to quash the proceedings, as requested, which power, the Courts, would sparingly exercise, more particularly, when the present case cannot be considered as an exceptional case where the proceedings issued under Section 107 of the Code or the summonses issued by the 2nd respondent ought to be quashed.

16. Therefore, there is no merit in the present Criminal petition, and accordingly the same is dismissed.

The 2nd respondent is directed to follow the procedure contemplated by the provisions of the Code and to dispose of the proceedings by affording an opportunity to the petitioners to show-cause, as expeditiously as possible not later than two months from the date of receipt of a copy of the order.

As a sequel thereto, miscellaneous petitions if any pending in both Criminal Petitions shall stand closed.

A.SHANKAR NARAYANA

Date:05.06.2017

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