

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.3624 of 2011

ORDER :

This petition is filed under Section 482 of Cr.P.C. to quash the charge-sheet in C.C. No.110 of 2009 on the file of the Judicial First Class Magistrate, Palakol, 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. On 23.3.2009 from 7.30 AM to 11 AM petitioners organized procession from railway station to the house of accused No.1 at China Gopuram in Palakol Town through Lock centre, Gandhi statue centre, main road without prior permission from the authorities concerned.

4. A perusal of the record goes to suggest that the petitioners 1 to 3 are residents of Palakol. The 4th petitioner is resident of Mattaparru Village of Poduru mandal. The 5th petitioner is resident of Pulapalli Village of Palakol Mandal and the 6th petitioner is resident of Palakol.

A case in crime No.92 of 2009 was registered on 23.3.2009 basing on the report of the 2nd respondent for the offence under Section 188 I.P.C.

5. The complainant is working as Team Member for implementation of Mode Code of Conduct of No.176 Palakol Assembly Constituency (Head Constable, Palakol P.S.). While so, on 23.3.2009 from 7.30 AM to 11 AM petitioners organized procession from railway station to the house of accused No.1 at China Gopuram in Palakol Town through Lock centre, Gandhi statue centre, main road without prior permission from the authorities concerned. 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 23.3.2009. The Sub-Inspector of Police, Palakol Town Police Station, basing on the report of the 2nd respondent, who Team Member for implementation of Mode Code of Conduct of No.176 Palakol Assembly Constituency (Head Constable, Palakol P.S.), registered crime No.92 of 2009 under Section 188 I.P.C. of Palakol Town Police Station on 23.3.2009 and investigated the case and filed the charge-sheet and the same was taken on file and numbered as C.C.No.110 of 2009.

6. 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.

7. 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.

8. 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 Team Member for implementation of Model Code of Conduct of No.176 Palakol Assembly Constituency (Head Constable, Palakol P.S.), submitted a report to the Sub-Inspector of Police, Palakol alleging that Smt.Bangaru Usharani a candidate of congress I party organized a procession with 35 cars, 100 motor bikes and with 200 people from Palakol railway station to her residence without any permission. The said Team Member for implementation of Model Code of Conduct of No.176 Palakol Assembly Constituency (Head Constable, Palakol P.S.) 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.110 of 2009 on the file of the Judicial First Class Magistrate, Palakol, West Godavari District.

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

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

12th October, 2017

skmr



JUSTICE N.BALAYOGI