

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7398 of 2017

ORDER:

The petitioner is the accused in C.C.No.251 of 2011 pending on the file of learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offences punishable under Section 153-A IPC and Section 125 of Representation of Peoples Act.

It is based on the report of the Inspector of Police, Special Branch, the crime No.318 of 2004 dated 13.04.2004 was registered and the police after investigation filed the final report for the offences supra and the learned Magistrate has taken cognizance. In the police final report, 8 witnesses cited all are the police officials, the so called eye witnesses to the so called speech of the accused that is covered by video coverage recorded by one of the police personnel and the others are present there, who registered the crime and who investigated the case and who arrested the accused and ultimately who filed the final report, the learned Magistrate has taken cognizance by allotting the said CC which is now sought for quashing.

Mainly so far as the offence under Section 125 of Representation of Peoples Act concerned, it must be in relation to an election offence. It is not even born by any of the record right from the FIR to the taking of cognizance from the police final report of there was an election notification issued and the speech particularly was in relation to an offence touching election process. Once such is the case, the application of Section 125 of Representation of Peoples Act is not there at all to take cognizance

by the learned Magistrate. Thus, the said cognizance order to that extent is unsustainable on its face.

Coming to the other Section 153-A IPC concerned, as rightly pointed out by the learned counsel for the petitioner, there is nothing from the record including from the police final report about any sanction as contemplated by Section 196(1)(a) Cr.P.C. obtained, which is a pre-condition for the learned Magistrate to take cognizance under Section 190 Cr.P.C. Once such is lacking, the very cognizance order for the offence under Section 153-A IPC no way survive to continue, leave about other merits argued even at length not necessary to go into the merits.

Accordingly and in the result, the Criminal Petition is allowed quashing the proceedings and the accused is acquitted and the bail bonds stand cancelled.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 23.10.2017
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