

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRL.P.NO.3623 OF 2011

O R D E R

Vide the present petition, petitioners seek to quash the proceedings in C.C.No.293/2009 on the file of Judicial First Class Magistrate, Palkol, West Godavari District and consequently quash the charge sheet filed in the CC mentioned above and any other proceedings emanating thereby.

The learned counsel appearing on behalf of the petitioners submit that vide order dated 16.02.2016 in CrI.P.No.2404 of 2010, this court quashed the proceedings in C.C.No.293/2009 relating to A-1, by recording as under:

7. As per the prosecution version, the petitioner has violated the orders issued by the Sub Divisional Police Officer under Section 30 of Police Act. Disobedience of the orders duly promulgated by a public servant would attract the provisions of Section 188 IPC. No order issued by the Sub Divisional Police Officer under Section 30 of Police Act has been filed. It is apposite to extract hereunder the relevant portion of Section 195 (1) (a) Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offence against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance —

- (a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit, such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

8 A perusal of the above provision clearly demonstrates that no Court shall take cognizance of offences under Sections 172 to 188 IPC except on the complaint in writing by a public servant concerned or some other public servant to whom he is administratively subordinate.

9 Section 2 (d) Cr.P.C. defines 'complaint'. A fascicular reading of Section 2 (d) and Section 195 (1) (a) Cr.P.C clearly manifest that the concerned public servant has to file a complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure stated supra, would not be curable. There is no mention in the charge sheet that the de-facto complainant is authorised by the Election Commission to lodge the complaint in this case. Even assuming, but not conceding, that the de-facto complainant is empowered to lodge the complaint, he has to follow the procedure contemplated under Section 195(1)(a) Cr.P.C. The material placed before the Court clinchingly establishes that the de-facto complainant has not followed the due procedure. Any investigation conducted in violation of the provisions of Cr.P.C. is non-est in the eye of law. The Court ought not to have taken cognizance of offence basing on the police report, which is non-est in the eye of law. The police have no right whatsoever to investigate into the matter and file report in so far as the offence under Section 188 IPC is concerned. The learned Magistrate has not considered the scope of Section 195(1) (a) Cr.PC while taking cognizance of offence under Section 188 IPC.

10 In similar set of facts, this Court quashed criminal proceedings in CrI.P.Nos.10022, 10023 and 10811 of 2009 and CrI.P.No.1700, 1714 and 1779 of 2000 vide separate orders on each petition on 30.10.2014.

11 Viewed from factual or legal aspects, continuation of criminal proceedings against the petitioner would certainly amount to abuse of process of Court. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to quash the proceedings against the petitioner/A.1.

12 Accordingly, the Criminal Petition is allowed, quashing the proceedings against the petitioner/A1 in C.C.No.293 of 2009 on the file of Judicial Magistrate of I Class, Palakol, West Godavari District. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.”

The learned counsel submits that the above legal position is applicable in case of the petitioners herein. Therefore, the present petition deserves to be allowed by quashing the proceedings.

The learned Additional Public Prosecutor does not dispute the above submission of the learned counsel for the petitioners and fairly conceded that if the present petition is allowed, he has no objection.

Keeping in view the fact that this court in CrI.P.No.2404/2010 quashed the proceedings qua the A-1, and the statement of the learned Additional Public Prosecutor, I hereby quash the proceedings in C.C.No.293/2009 on the file of Judicial First Class Magistrate, Palkol, West Godavari District, in respect of the present petitioners.

The criminal petition is accordingly allowed.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT, J

DATE:05---1—2017
AVS