

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.2076 of 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/accused Nos.1 and 2, seeking to quash the proceedings in C.C.No.321 of 2017 on the file of the Judicial Magistrate of First Class, Atmakur, SPSR Nellore District, registered for the offences under Sections 188 & 290 read with 34 of I.P.C.

2. Heard the learned counsel for the petitioners/accused Nos.1 and 2, learned Assistant Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the petitioners/accused Nos.1 and 2 would submit that there is no permission, as required under Section 195(1) of Cr.P.C. to prosecute the petitioners/accused Nos.1 and 2 for the offence under Section 188 of I.P.C. Further, the offence under Section 290 of I.P.C. is a non cognizable offence. There is no public nuisance as contended, since some singing was going on in the open yard of the temple. He has relied on a decision rendered by this Court in Kottu Satyanarayana v. State of Andhra Pradesh¹.

4. The material on record reveals that the sub-inspector of police, Atmakur Police Station, SPSR Nellore District, issued a police proceeding, dated 10.06.2017, and on that, the instant crime is registered and investigated. Thereafter, charge sheet is

¹ 2015(1) ALD (CrL.) 572 (AP)

filed and the same is numbered as C.C.No.321 of 2017 on the file of the Judicial Magistrate of First Class, Atmakur, SPSR Nellore District, for the offences under Sections 188 & 290 read with 34 of I.P.C. The allegation is that the petitioner/accused Nos.1 and 2 arranged a stage in front of Varadaraja Swamy temple and conducted cultural programmes by singing songs on that stage, with mike, without any permission from the concerned authorities. Admittedly, the investigating officer did not seek permission, as required under Section 195 of Cr.P.C., to prosecute the petitioners/accused Nos.1 and 2 for the offence under Section 188 of I.P.C, which is mandatory. Further, it was a festive occasion. As per the language envisaged under Section 195 Cr.P.C., public servant concerned has to lodge a complaint as required under the Code of Criminal Procedure, 1973, for the offence under Section 188 I.P.C. There is no such complaint in this case. The person who is competent to set the law in motion is detailed in Section 195 Cr.P.C. No such person has lodged complaint. In view of the language envisaged under Section 195 Cr.P.C., the instant complaint cannot be proceeded with. Further, the offence under Section 290 of I.P.C. is non cognizable. The facts and circumstances of the instant case are similar to the facts and circumstances referred in the above citation.

5. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.321 of 2017 on the file of the Judicial Magistrate of First Class, Atmakur, SPSR Nellore District, are quashed.

Miscellaneous petitions, if any, pending in this Criminal
Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

21st February, 2018
Bvv

