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THE HONOURABLE SRI JUSTICE N. BALAYOGI
CRIMINAL PETITION No.2879 of 2010

ORDER:

This Criminal Petition is filed under section 482 of Cr.P.C., to quash the proceedings in STC.No.2 of 2009 on the file of the V Additional Munsif Magistrate, Guntur.

2. The contention of the petitioners is that the respondent lodged a false complaint and taken away the money from the petitioners. They never tried to buy the voters in Guntur constituency on behalf of Praja Rajyam party candidate. As per the charge sheet, the petitioners failed to prove the authority of the amount. But the learned V Additional Junior Civil Judge, Guntur already released the amount to petitioner No.1 stating that the amount pertains to Company and relevant documents were filed to that effect. Whereas, in the charge sheet, it is alleged that the amount is not black money and deleted section 132 of IT Act. Having deleted the section stating that the money is not black money, filing of charge sheet, amounts to abuse of process to voters.

3. It is further contended that the petitioners never used the money for buying voters, the amount is kept for business transaction of the company and they have also filed necessary proof to show that the amount pertains to company and they have no intention to distribute the same.

4. Per contra, the learned Public Prosecutor contended that on receipt of information from the Deputy Superintendent of Police, Guntur Town Sub-Division, Guntur, on 21.4.2009 at 7.00p.m., the

Inspector of Police, West, L&O Circle, Guntur Town secured the presence of Nadikudi Dharmarao and Banka Jayarao, surprised the room No.304 and found the petitioners along with cash and they brought the amount for distribution to voters which amount pertains to Praja Rajyam party which was seized. Hence, there is prima facie material to prosecute the petitioners.

5. A perusal of the material go to show that on 21.4.2009 at 7.00 p.m, the Inspector of Police, West, L&O Circle, Guntur Town, received information from the Deputy Superintendent of Police, Guntur Town Sub-Division, Guntur, immediately to secure the presence of Nadikudi Dharmarao and Banka Jayarao, who narrated about illegal possession of cash with the accused at Geetha Regency at Arundelpet, Guntur. The Inspector of Police left the circle office together with Police Constables, Assistant Sub-Inspector and other staff to Geetha Regency. The Police surprised the room No.304 of Geetha Regency under the directions of Inspector of Police. The petitioners gave some prevaricate statements at first and finally disclosed their identity. Further, when Inspector of Police separated both the petitioners-accused and when questioned about their purpose of staying in the hotel, petitioner No.1-A1 gave different statements at first and later he confessed that his daughter was given in marriage to one Thota Sathyannarayana who is no other than the brother of Thota Chandra Sekhar, who is the contesting candidate for the post of Member of Parliament, Guntur Parliamentary Constituency on behalf of Praja Rajyam party. On 19-4-2009, the son-in-law of petitioner No.1 contacted him over phone and requested to come over to Guntur and also informed that he himself booked room No.304 on 20-4-2009, petitioner No.1 along with petitioner No.2 occupied the said room.

6. It is further contended that on 21.4.2009, the son-in-law of petitioner No.1 Thota Satyannarayana contacted him over phone, informed that he is sending cash of Rs.48,00,000 which relates to the party fund through an youngster and requested to keep the same with him till further information. Accordingly, his son-in-law sent the said cash through an youngster. After verifying the cash, petitioner No.1 locked the suit case and kept the same in his room. When the Inspector of Police questioned petitioner No.1 about the details and legal authority over the huge amount, either petitioner No.1 or petitioner No.2 did not account for the same. Further, they voluntarily confessed that the entire amount relates to Praja Rajyam party fund. When the Inspector of Police asked to show the suit case, petitioner No.1 took out the suit case and kept the same in the presence of Nadikudi Dharma Rao and Banka Jayarao. On examination, the Inspector of Police found the denomination of cash of Rs.500x72 bundles each containing 100 currency notes of Rs.500/- totaling to Rs.36,00,000/-, cash Rs.1000x12 bundles, each bundle containing 100 notes total Rs.12,00,000/- and in all, total cash of Rs.48,00,000/-. Since the accused did not account for the same and as they have no proof to prove their legal authority over the huge amount, Inspector of Police suspected the entire cash and seized the same in the presence of Nadikudi Dharma Rao and Banka Jayarao, under cover of mediator nama.

7. The learned Counsel for the petitioners contended that since 195(1) is bar to take cognizance of an offence under section 171-H and 188 IPC. In support of his contention, Counsel for petitioners relied upon the judgement of High Court of Andhra Pradesh, in the

case of K. SATYA NARAYANA AND ANOTHER Vs. STATE OF ANDHRA PRADESH AND ANOTHER¹ wherein it was held that, “By virtue of Section 195(1)(a)(i) Cr.P.C., the Court should not take cognizance of the offence punishable under section 188 Indian Penal Code except on a written complaint given by the complainant. In the present case, admittedly, the corresponding report was filed by the Constable of Ramachandrapuram police station and subsequently the charge-sheet was filed by the concerned Inspector of that police station. Thus, there has been clear violation of the mandatory provisions of Section 195(1)(a)(i) of Cr.P.C. Therefore, taking cognizance in the present case is not tenable and accordingly the proceedings are liable to be quashed. Nobody should be prosecuted without the authority of law and doing so would amount to clear abuse of process of law and harassment.

8. The learned Counsel for the petitioners further relied upon another judgement of the High Court of Andhra Pradesh, in the case of U V R V ANJANEYULU Vs. STATE², wherein it was held that, “It is manifest from the reading of 195(1)(a)(i) of Cr.P.C that no Court shall take cognizance of the offence punishable under Section 188 IPC except on the complaint filed by the public servant concerned or any other public servant who is subordinate to him and admittedly, in this case, the Mandal Revenue Officer is the public servant concerned about the commission of the offence and he has not filed the complaint but the Sub-Inspector of police filed the complaint before the Court in that view of the matter also, CC No.24/97 is not maintainable.”

¹ 2011 Law Suit (AP) 1201

² 1997 Law Suit (AP) 1218

9. In the earlier case in 2011 Law Suit (AP) 1201, the respondent report was filed by the Constable of Ramachandrapuram police station and subsequently charge-sheet was filed by the concerned Inspector of that police station. In such circumstances, it was held that there has been clear violation of mandatory provisions of Section 195(1)(a)(i) of Cr.P.C with regard to the offence under section 188 IPC. But in the present case, the facts are different. The Inspector of Police left the circle office together with Police Constables, Assistant Sub-Inspector and other staff to Geetha Regency. The Police surprised the room No.304 of Geetha Regency under the directions of Inspector of Police.

10. On the instructions of the Deputy Superintendent of Police, Guntur Town Sub-Division, Guntur, the Inspector of Police, West L&O Circle, Guntur Town on 21-4-2009 at 7.00pm when he secured mediators along with staff and mediators surprised room No.304 of Geetha Regency where the Inspector of Police found the petitioners along with cash of Rs.48,00,000/- where the petitioner No.1 gave different statements at first and later he confessed that his daughter was given in marriage to one Sri Thota Satyannarayana, ho is no other than the brother of Sri Thota Chandra Sekhar, who is the contesting candidate to the post of Member of Parliament, Guntur Parliamentary Constituency on behalf of Praja Rajyam Party. Room No.304 was booked by son-in-law of petitioner No.1 in the name of Y.D. Anand in Geetha Regency on 20.4.2009. Both the petitioners occupied the said room on 20.4.2009. The son-in-law of petitioner No.1 informed him over telephone that he is sending cash of Rs.48,00,000/- which relates to party fund through an youngster and requested him to keep the same with him till further information. Accordingly, petitioners received the said amount. The Inspector of Police seized the amount

in the presence of witnesses and arrested the petitioners and gave report. Accordingly, the Inspector of Police brought the petitioners-A1 and A2 along with cash at 9.15p.m., and the Inspector of Police endorsed the mediator name to Sub-Inspector of Police, who investigated the case. The Sub-Inspector of Police, examined the witnesses and recorded statements and filed charge sheet.

11. A perusal of Section 195(1)(a)(i) go to show that – Prosecution for contempt of lawful authority of public servants, for offences 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 of the IPC. Whereas, section 171-H IPC is different and as such no application to the present case and the petitioners are charged with the offences punishable under section 188 and 171-H IPC. The money released by the learned V Additional Junior Civil Judge, Guntur vide CMP.No.2724/2009, dated:18-5-2009 will no way effect taking cognizance of the offence and by registering FIR. Therefore, there is nothing to suggest that the respondent abused the process of law and no prejudice would cause to the petitioners by registering STC.No.2/2009.

12. In the result, the Criminal Petition is dismissed while vacating the interim stay granted on 26.03.2010 in M.P. No.2903 of 2010.

JUSTICE N. BALAYOGI

Dated:15-2-2018
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