

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4398 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-accused No. 1 to quash the proceedings against him in C.C.No. 247 of 2017 on the file of the Court of Additional Judicial I Class Magistrate, Yelamanchili (for short, 'the Court below'), registered for the offences punishable under Sections 147, 341, 353, 188 and 506 read with Section 149 of IPC.

2. L.W.1 Barika Ganeshwara Ra, who is working as Police Constable, Atchutapuram Police Station, lodged a report with Station House Officer, Atchutapuram Police Station, alleging that on 04-05-2016 at about 2.15 hours near Janguluru Junction while L.Ws.1 to 5 were on bandobust duty in view of meeting being conducted by Sri Y.S.Jaganmohan Reddy, YSRCP Leader, the petitioner-accused No. 1 and accused Nos. 2 to 5, who are leaders and followers of YSRCP, formed themselves into an unlawful assembly and started stopping Brandix Company buses and forcibly attempted to get down women employees from the buses; that when L.Ws.1 to 5 asked the accused not to create any inconvenience on the road, the accused pushed them and assaulted them while discharging their legitimate duties; that the accused forcibly stopped the Brandix Company buses and tried to take women employees to the said meeting and that the accused also threatened L.Ws.1 to 5 to see their end if they stop them. Based on the above report, a case in crime No. 62 of 2016 was registered for the offences referred *supra* and took up investigation. During the course of investigation, as many as six witnesses are examined and their statements are recorded under Section 161 (3) of Cr.P.C. After collecting evidence and having

concluded that there is *prima facie* material to proceed against the accused, charge sheet has been filed. Feeling aggrieved, the present petition is filed.

3. At the hearing, learned counsel for the petitioner has contended that L.W.1, who is working as Police Constable, is incompetent to lodge the present report in view of bar under Section 195 of Cr.P.C. and apart from that, the petitioner did not obstruct the employees of Brandix Company from proceeding in any direction. He has also contended that the petitioner never interfered with the duties of L.Ws.1 to 5 and never threatened them with dire consequences. In support of his contentions, learned counsel for the petitioner has placed reliance on ***Dr. Kodela Siva Prasad and others Vs. Koritala Venkata Ramanaiah and anoher*¹**.

4. Whereas learned Public Prosecutor (A.P.) has opposed the petition.

5. As seen from the material on record, the offences allegedly committed by the petitioner are punishable under Sections 147, 341, 353, 188 and 506 read with Section 149 of IPC. The present report is lodged by L.W.1 Police Constable who was on bandobust duty at the time of the alleged incident. Section 188 of IPC deals with punishment for disobedience to order duly promulgated by public servant. The case of the prosecution is that a prohibitory order was promulgated by exercising power under Cr.P.C. and the offence allegedly committed by the petitioner is violation of the order promulgated by the Government. However, in view of Section 195 of Cr.P.C., no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC or of any abetment of, attempt to commit, such offence, or 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. Here in this

¹ 2006 (3) ALT (CrI.) 495 (A.P.)

case, the report is lodged by L.W.1 who is working as Police Constable and in view of the bar, the Court below cannot take cognizance on the police report for the offence punishable under Section 188 of IPC and this aspect is squarely covered by the judgment of this Court in **Dr. Kodela Siva Prasad Rao** referred *supra*. Therefore, the proceedings against the petitioner for the offence punishable under Section 188 of IPC are liable to be quashed.

6. The other offence allegedly committed by the petitioner is under Section 147 of IPC which deals with punishment for rioting. Rioting is defined under Section 146 of IPC and according to it, whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Therefore, to constitute the offence punishable under Section 147 of IPC, there must be an unlawful assembly as defined under Section 141 of IPC which must consists of not less than five persons. In the case on hand, the accused are five in number and thus the requirement of number is satisfied but there is absolutely nothing on record to show that they committed any act in prosecution of their common object of such assembly. In the absence of any statement of the witnesses recorded during investigation under Section 161 (3) of Cr.P.C., the petitioner cannot be proceeded with trial for the offence punishable under Section 147 of IPC.

7. The other offence allegedly committed by the petitioner is under Section 341 of IPC which deals with punishment for wrongful restraint. The word wrongful restraint is defined under Section 339 of IPC and according to it, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person. Therefore, there must be an obstruction of a

person from moving in any direction to constitute the offence. According to the case of prosecution, the women employees of Brandix Company are obstructed from moving in one direction with a view to take them to the meeting being conducted by the leader of YSRCP but such obstruction to move in a specific direction does not constitute the offence punishable under Section 341 of IPC. Consequently, the proceedings against the petitioner for the offence punishable under Section 341 of IPC are liable to be quashed.

8. The other offence allegedly committed by the petitioner is punishable under Section 353 of IPC *i.e.* assault or use of criminal force to deter a public servant from discharging his official duties. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Therefore, to constitute the offence punishable under Section 353 of IPC, there must be assault or use of criminal force. The word assault is defined under Section 351 of IPC and according to it, whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. The word criminal force is defined under Section 350 of IPC and according to it, whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury,

fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. Turning to the case of prosecution, the petitioner and other accused allegedly used criminal force to deter L.Ws.1 to 5 from discharging their official duties. When I adverted to the statements of the witnesses, it is stated that the petitioner and other accused pulled L.Ws.1 to 5 to some extent from the scene of offence and thereby obstructed from discharging their duties. Pulling police personnel who are public servants as defined under Section 21 of IPC would certainly constitute the offence punishable under Section 353 of IPC. Hence, I find that there is material to proceed against the petitioner for the offence punishable under Section 353 of IPC.

9. Lastly, the other offence allegedly committed by the petitioner is punishable under Section 506 of IPC but none of the allegations made in the report or the statements recorded by police disclosed that the petitioner threatened L.Ws.1 to 5 with dire consequences. In the absence of any allegation about criminal intimidation as defined under Section 503 of IPC, the proceedings against the petitioner are liable to be quashed.

10. In view of my foregoing discussion, the proceedings against the petitioner-accused No. 1 in C.C.No. 247 of 2017 on the file of the Court below for the offences punishable under Sections 147, 341, 188 and 506 of IPC are quashed while permitting the Court below to proceed with trial for the offence punishable under Section 353 of IPC.

11. The criminal petition is accordingly partly allowed. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 31-07-2018.

JSK

M.SATYANARAYANA MURTHY, J.