

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4278 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner/A1 to quash the proceedings against him in C.C.No.176 of 2017 on the file of Additional Judicial First Class Magistrate, Yelamanchili, registered for the offences punishable under Sections 341 and 188 read with 34 IPC.

L.W.1 M. Raja Babu, who is working as Police Constable, Yelamanchili Town Police Station, lodged a report with the Station House Officer alleging that on 09.06.2015 between 10.30 to 12.30 hours at Yelamanchili Dimili Junction, the petitioner and others joined together illegally on the road, raised slogans to arrest Chief Minister of Andhra Pradesh in vote for note case by causing trouble to general traffic and obstructed the vehicles. Based on the report, a case in Crime No.50 of 2015 was registered for the offences referred supra and took up investigation. During the course of investigation, as many as four witnesses were examined and their statements are recorded under Section 161(3) Cr.P.C. After collecting evidence and having concluded that there is *prima facie* material to proceed against the accused and filed charge sheet.

At the hearing, learned counsel for the petitioner contended that LW.1 who is working as Police Constable, is incompetent to lodge the present report in view of bar under Section 195 Cr.P.C. and apart from that the petitioner never committed any offence and placed the judgment of this Court in **Dr Kodela Siva Prasad and others v Koritala Venkata Ramanaiah and another¹**.

Whereas learned Public Prosecutor opposed the petition.

¹ 2006(3) ALT (crI) 495 (A.P)

The report was 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 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 question 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.

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 general public are obstructed from moving in one direction and they staged dharna against the Government orders 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.

In view of my foregoing discussion, the criminal petition is allowed quashing the proceedings against the petitioner/A1 in C.C.No.176 of 2017 pending before the Additional Judicial Magistrate of First Class, Yelamanchili.

Pending miscellaneous petitions, if any, in this petition shall stand closed.

10-07-2018

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M.SATYANARAYANA MURTHY, J.