

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7127 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/A4 seeks to quash the proceedings against him in C.C.No.231 of 2009 on the file of VII Additional Judicial First Class Magistrate, Warangal.

2) The case of the prosecution is that the Sub-Inspector of Police, Wardhanpet on 14.04.2009 arrested A1 and seized Rs.2,20,730/- under the cover of panchanama. A1 said to have confessed that A2 and A3 handed over the said amount to him to distribute to Congress-1 party sympathizers as well as general voters by illegal means to get the votes in favour of A4. On the basis of said panchanama, the police registered a case in Cr.No.70 of 2009 for the offences under Sections 171(E), (F) and 188 IPC. The police after investigation filed charge sheet. The learned Magistrate took cognizance and registered the same as C.C.No.231 of 2009.

3) Challenging the criminal proceedings, learned counsel for petitioner sought to quash the proceedings on the following grounds.

a) Firstly, the offences under Sections 171(E), (F) and 188 IPC are non-cognizable offences. Therefore, the Inspector of Police ought to have obtained permission of the Court before registration of crime. He committed grave infraction of the procedure and

directly registered the case himself and investigated and filed the charge sheet. The trial Court without looking this aspect registered C.C.

b) Secondly, the learned Magistrate committed a grave error while taking cognizance against the petitioner under Section 188 IPC basing on the police report which is in violation of Section 195 Cr.P.C.

c) Thirdly, it is argued that even if the allegations made in the complaint are ex-facie taken to be true and correct, no case is made out against the petitioner for the offences punishable under Sections 171 (E), (F) IPC.

He thus prayed to allow the petition.

4) Per contra, learned Additional Public Prosecutor would argue that petitioner/A4 is a contesting candidate in the elections and the amount was sent by him through A2 and A3 to handover to A1 and therefore the offences under Sections 171 (E), (F) are made out against him. He would further argue that the procedural irregularity if any will not vitiate the proceedings.

He thus prayed to dismiss the application.

5) The point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT**: The record shows that Sub-Inspector of Police, Wardhanpet registered a case in Cr.No.70 of 2009 for the offences punishable under Sections 171 (E), (F) and 188 IPC and after completion of investigation he laid charge sheet against the petitioner and others for the above mentioned offences. The learned VII Additional Judicial First Class Magistrate, Warangal took cognizance and registered the same as C.C.No.231 of 2009 and issued summons to the accused.

7a) The first contention is that since the offences under Sections 171 (E), (F) and 188 IPC are non-cognizance offences, the Sub-Inspector of Police ought to have followed the procedure contemplated under Section 155 (2) Cr.P.C. This argument does not hold water. It is seen that Section 171 (E), (F) are non-cognizable offences whereas Section 188 is a cognizance offence. Section 155(4) Cr.P.C. lays down that where a case relates to two or more offences of which one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. In the instant case, since offence under Section 188 IPC is a cognizable offence, present case shall be deemed to be a cognizable case. Therefore, this argument of the petitioner cannot be countenanced.

b) Then, the second contention is concerned, Section 195 Cr.P.C. has to be scrutinized. The said section reads thus:

“Section 195: 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 (both inclusive) of the Indian Penal Code (45 of 1860), or
 - (ii) of any abetment of, or 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.”

This section clearly lays down that no Court shall take cognizance of the offences under Sections 172 to 188 IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

8) In the instant case, offence under Section 188 IPC is concerned, the complainant has not followed the procedure contemplated under the Code of Criminal Procedure. Therefore, the investigation conducted in violation of Section 195 (1) (a) is nonest in the eye of law. Consequently cognizance of the offence taken by the Court basing on the police report is not legally sustainable. It appears the learned Magistrate has not considered the scope of Section 195 (1) (a) Cr.P.C. while taking cognizance of the offence under Section 188 IPC. Therefore, the proceedings against A4 are

liable to be quashed sofaras offence under Section 188 IPC is concerned.

9) The next argument is that even if the prosecution allegations are taken to be true, the offences under Section 171(E), (F) are not made out.

10) The prosecution case is that petitioner/A4 is a contesting candidate on behalf of Congress-I party and in fact he sent the amount through A2 and A3 for distribution to the voters by illegal means. In the charge sheet, it is further mentioned that as per the statement of LW5, A4 has sent the amount of Rs.2,20,730/- through A2 and A3 with an instruction to hand over the said amount to A1 to distribute the same among the Congress-I sympathizers and other voters to get the votes in favour of A4. Therefore, there is a *prima facie* case against the petitioner/A4.

11) It is true in CrI.P.No.1499 of 2010 the proceedings against A2 and A3 were quashed on the observation that the money was not seized by the police directly from the possession of A2 and A3 and it was not the case of the prosecution that A2 and A3 were distributing the money on behalf of contesting candidate in order to influence the voters. Hence, no *prima facie* case was made out against A2 and A3. However, it should be noted that petitioner/A4 is concerned, as stated supra, as per the statement of LW5, A4 has given Rs.2,20,730/- to A2 and A3 with an instruction to handover

the said amount to A1 to distribute the same among the voters and others. Therefore, it is not a fit case to quash the proceedings in its entirety.

12) In the result, this Criminal Petition is partly allowed and the proceedings against the petitioner/A4 in C.C.No.231 of 2009 on the file of VII Additional Judicial First Class Magistrate, Warangal are quashed for the offence under Section 188 IPC. However, the petitioner shall face trial for the offence under Section 171 (E), (F) IPC.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 13.07-2018
Murthy

