

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7571 OF 2018

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is filed to quash the proceedings in C.C.No.256 of 2017 on the file of Judicial Magistrate of First Class, Banswada, Kamareddy District, against the petitioners/A.1 to A.11.

2. The allegations in the complaint would go to show that the *de facto* complainant, Ch.Sailoo, who is a Constable of Banswada Police Station, lodged a complaint with the Station House Officer, Banswada, alleging that on 30.09.2017 at about 09:00 AM while he was performing patrolling duty, he saw the accused persons. On enquiry, they revealed that earlier they went on relay hunger strike for 107 days. Even though one year is elapsed by today, Banswada town was not declared as District so far by the Government, for which they are staging Dharna by keeping a banner underneath a Tent. Due to said Dharna, the smooth running of traffic on the road, without any permission from the Government, is being obstructed. Therefore, the Station House Officer registered a case in Crime No.234 of 2017 for the offences punishable under Sections 341, 188, 290 and 145 IPC against the petitioners. The Sub-Inspector of Police, Banswada took up investigation and during investigation, he examined L.Ws.1 to 7 and recorded their statements under Section 161 (3) Cr.P.C. After completion of investigation, having found *prima facie* material against these petitioners to proceed against them for the aforesaid offences, the police filed charge sheet before the learned

Magistrate, which was taken on file, numbered as C.C.No.256 of 2017.

3. The first and foremost contention raised by learned counsel for the petitioners/A.1 to A.11 is that the allegations in the charge sheet do not constitute any offence punishable under Sections 341, 188, 290 and 145 IPC and hence, he prays to quash the proceedings against the petitioners in the aforesaid Calendar Case.

4. On the other hand, learned Additional Public Prosecutor while fairly conceding that the offence under Section 188 IPC cannot be taken cognizance in view of bar under Section 195 IPC, contended that obstructing public from moving in a specific direction constitutes an offence punishable under Section 341 IPC and forming an unlawful assembly, constitutes an offence punishable under Section 145 IPC and prayed to dismiss the petition.

5. As per the allegations in the charge sheet, the petitioners were found staging Dharna on the road near Sangameswara Colony on account of completion of 107 days of relay hunger strike to declare Banswada Town as a District and obstructing smooth running of traffic on the road without any permission from the Government.

6. Section 341 IPC deals with punishment for wrongful restraint and the word 'wrongful restraint' is defined under Section 339 IPC. According to Section 339 IPC, 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.

7. In the case on hand, the petitioners are allegedly obstructing the public from passing on the road in a specific direction, but, they did not restrain the public proceeding in any direction, in which the public has a right to proceed. They obstructed the public only from proceeding in one direction i.e., towards Sangameswara Colony, by staging Dharna. Therefore, from the allegations in the charge sheet and other material produced, it is clear that the petitioners were not restraining the public from moving in any direction, in which the public has right to proceed. Hence, the allegations made in the charge sheet do not constitute an offence punishable under Section 341 IPC.

8. The other offence allegedly committed by the petitioners is punishable under Section 188 IPC, which deals with disobedience to order duly promulgated by public servant. Section 195 IPC is power to take cognizance of offence under Section 188 IPC.

9. Learned Additional Public Prosecutor appearing for the State fairly conceded that the offence under Section 188 IPC cannot be taken cognizance in view of bar under Section 195 IPC. Therefore, on this ground alone, the proceedings against these petitioners for the offence punishable under Section 188 IPC are liable to be quashed.

10. The other offence allegedly committed by the petitioners is punishable under Section 145 IPC. According to this section, whoever joins or continues in an unlawful assembly, knowing that

such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. 'Unlawful Assembly' is defined under Section 141 IPC. According to this Section, an assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is-

- 1) To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament of the Legislature of any State], or any public servant in the exercise of lawful power of such public servant; or
- 2) To resist the execution of any law, or of any legal process; or
- 3) To commit any mischief or criminal trespass, or other offence; or
- 4) By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right to way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
- 5) By means of criminal force, or show of criminal force, to compel any person to do what he is legally bound to do, or to omit to do what he is legally entitled to do."

But, the allegations made in the charge sheet do not disclose any unlawful assembly to do any of the acts mentioned in clauses 1 to 5 under Section 141 IPC, *prima facie* the proceedings against these petitioners for the offence punishable under Section 145 IPC are liable to be the quashed.

11. The third offence allegedly committed by the petitioners is punishable under Section 290 IPC. According to Section 290 IPC, whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

12. Section 268 IPC defines 'public nuisance'. According to this section, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which cause any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

13. In the present case, the allegation in the charge sheet is that the accused persons were obstructing the public from moving towards Sangaeswara Colony by conducting Dharna. Staging Dharna is not in dispute, but, whether such Dharna causes any annoyance to the public, though not danger?

14. Public nuisance means the act that is illegal because it interferes with the right of the public generally. Therefore, obstructing the public from moving in one direction i.e., Sangameswara Colony side when they are entitled to enjoy their right to use the road to proceed in such a direction would amount to interference with the right of the public generally. The meaning

of the word 'annoyance' is irritation, exasperation, vexation, indignation, anger, crossness, displeasure, chagrin, pique.

15. Here, in this case, on account of obstruction of the public from moving in one direction, certainly it will cause irritation or anger to the public at large, who are entitled to move in such a direction. Therefore, the act of obstruction of the petitioners would fall in the ambit of Section 290 IPC, i.e., the punishment for the public nuisance. As the allegation made in the complaint would constitute an offence under Section 290 IPC, the proceedings against these petitioners for the said offence cannot be quashed as the jurisdiction of this Court is limited and such power can be exercised only when the allegations made in the complaint do not constitute any offence under penal provisions. As discussed above, the allegations made in the complaint would constitute an offence punishable under Section 290 IPC.

16. Hence, the Criminal Petition is allowed in part quashing the proceedings against the petitioners for the offences punishable under Sections 341, 188 and 145 IPC while permitting the trial Court to proceed against these petitioners for the offence punishable under Section 290 IPC.

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

M.SATYANARAYANA MURTHY, J

JULY 27, 2018
YVL

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dt.27.07.2018

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