

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9124 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner/A2 to quash the proceedings against him in C.C.No.76 of 2017 on the file of Judicial First Class Magistrate, Adilabad, registered for the offences punishable under Sections 188, 341, 153, 504 read with 34 IPC.

The Sub-Inspector of Police, II Town Police Station, Adilabad, lodged report with the Station House Officer alleging that on 04.08.2015, the petitioner and others staged dharna in front of collectorate against the State and Central Government without prior permission from the officials. Based on the said report, a case in Crime No.273 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 Inspector of Police, 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.

The report was lodged by L.W.1 Inspector of Police, who was on bandobust duty at the time of the alleged incident. Section 188 of IPC deals with

¹ 2006(3) ALT (crI) 495 (A.P)

punishment for disobedience to order duly promulgated by the 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 Sub Inspector of Police 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 is 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.

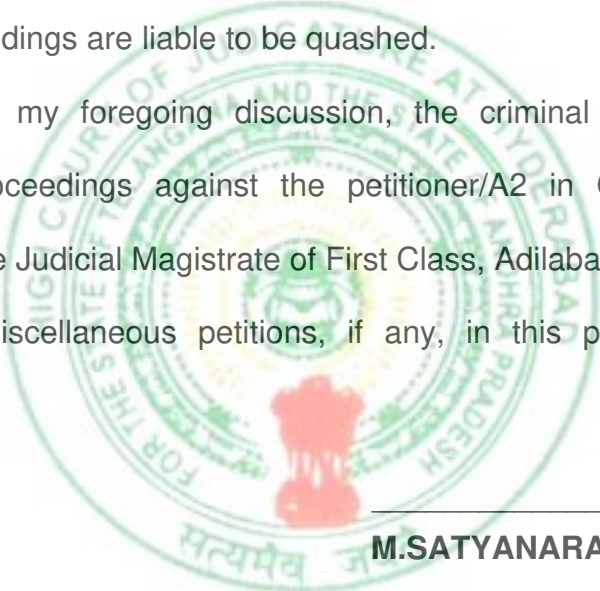
According to Section 153 IPC, whoever by committing rioting maliciously, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both. To constitute an offence punishable under Section 153 IPC there must be provocation to any person to commit rioting, but no such allegation is made in the charge sheet to attract Section 153 IPC.

The other offence allegedly committed by the petitioner is punishable under Section 504 IPC. Section 504 IPC says that Intentional insult with intent to provoke breach of the peace. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. To constitute an offence under Section 504 IPC (a) there must be intentional insult (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to

commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 IPC are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant as held by the Apex Court in **Fiona Shrikhande v State of Maharashtra and another**². In the present facts of the case, I find no *prima facie* material to constitute such offence punishable under Section 504 IPC. Hence, the proceedings are liable to be quashed.

In view of my foregoing discussion, the criminal petition is allowed quashing the proceedings against the petitioner/A2 in C.C.No.76 of 2017 pending before the Judicial Magistrate of First Class, Adilabad.

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



M.SATYANARAYANA MURTHY, J.

28-07-2018

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² AIR 2014 SC 957