

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.9109 of 2018

ORDER

This criminal petition under Section 482 of Code of Criminal Procedure, 1973, is filed to quash the proceedings in S.T.C.No.3 of 2016 on the file of Judicial Magistrate of First Class, Adilabad registered for the offence punishable under Section 188 IPC, against the petitioner/accused.

2. It is the case of the prosecution that the petitioner along with some others, in violation of model conduct of the code, has conducted kala jatha programme on 18.04.2014, without permission during the election period. Thus, the petitioner and others have allegedly committed the aforesaid offences.

3. Learned counsel for petitioner as well as the Additional Public Prosecutor submitted that in the present case, the de facto-complainant is not authorized by the Election Commission to lodge the complaint and that the procedure contemplated under Section 195(1)(a) of Cr.P.C. has not been followed and therefore, the investigation is in violation of the provisions of the Cr.P.C.

4. Learned counsel for petitioner submitted that a learned single Judge of this Court considering similar allegations in the light of provisions under Section 2(d) and 195(1)(a) of Cr.P.C. in Crl.P.No.1779 of 2010, dated 30-10-2014, quashed the proceedings against the petitioners therein in exercise of the jurisdiction under Section 482 Cr.P.C. and allowed the criminal petition. For better appreciation, the relevant portion of the order is extracted as

under :

“8. A perusal of the above provision clearly demonstrates that no Court shall take cognisance of offences under Sections 172 to 188 I.P.C. except on the complaint in writing by a public servant concerned or some other public servant to whom he is administratively subordinate.

9. Section 2(d) Cr.P.C. defines ‘complaint’. A fascicular reading of Section 2(d) and Section 195 (1)(a) Cr.P.C. and Section 188 I.P.C. demonstrate that the concerned public servant has to file a complaint in writing before the Magistrate, having territorial jurisdiction. Even a slightest deviation from the procedure stated supra, would not be curable. There is no mention in the charge sheet that the de facto-complainant is authorised by the Election Commission to lodge the complaint in this case. Even assuming, but not conceding, that the de facto-complainant is empowered to lodge the complaint, he has to follow the procedure contemplated under Section 195(1)(a) Cr.P.C. The material placed before the court clinchingly establishes that the de facto-complainant has not followed the due procedure. Any investigating conducted in violation of the provisions of Cr.P.C. is non-est in the eye of law. The Court ought not have taken cognisance of offence basing on the police report, which is non-est in the eye of law. The police have no right whatsoever to investigate into the matter and file report in so far as the offence under Section 188 I.P.C. is concerned. The learned Magistrate has not considered the scope of Section 195(1)(a) Cr.P.C. while taking cognisance of offence under Section 195 I.P.C.

10. Viewed from factual or legal aspects, continuation of criminal proceedings, against the petitioners would certainly amount to abuse of process of Court. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to quash the proceedings against the petitioners/A1 to A3.”

5. In view of the principle laid down in the above decision, the Criminal Petition is allowed quashing the proceedings in S.T.C.No.3 of 2016 on the file of Judicial Magistrate of First Class, Adilabad, against the petitioner/accused.

Miscellaneous Petitions, if any pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

28.08.2018
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