

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CRIMINAL PETITION No.9488 OF 2011

Between:

Smt. Kavitha, W/o.Anil,
Aged about 33 years,
Occ:President, Telangana Jagruthi,
R/o.Flat No.202, Hilltop Residency,
Banjara Hills, Hyderabad.

--- Petitioner/Accused No.2.

VERSUS

The State of Telangana,
Rep. by Public Prosecutor
High Court of Judicature
at Hyderabad.

--- Respondent/complainant

Date of Order Pronounced : 02-11-2018

SUBMITTED FOR APPROVAL:

SMT. JUSTICE T.RAJANI

1. Whether Reporters of Local newspapers
may be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Her Lordship wishes to see the
fair copy of the order? Yes/No

*** SMT. JUSTICE T.RAJANI**

%Dated: 02-11-2018

+ CRIMINAL PETITION No. 9488 OF 2011

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Aged about 33 years,
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Rep. by Public Prosecutor
High Court of Judicature at
Hyderabad. --- Respondent/Complainant.

! Counsel for the petitioner : Mr. K.Ravinder Reddy

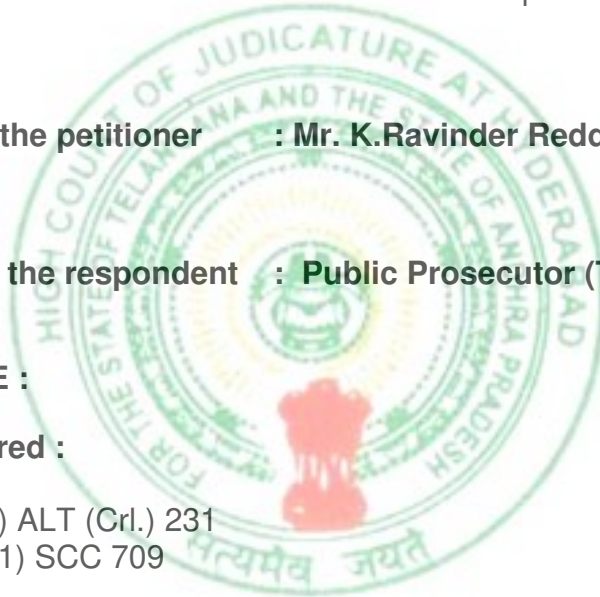
^ Counsel for the respondent : Public Prosecutor (TG)

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2012 (3) ALT (Crl.) 231
2. 1996 (11) SCC 709



SMT JUSTICE T.RAJANI**CRIMINAL PETITION No.9488 OF 2011****ORDER:**

1. This Criminal Petition, under Section 482 of Cr.P.C., is filed by the Petitioner/A-2 seeking to quash the proceedings in C.C. No.19 of 2009, pending on the file of the Court of Judicial First Class Magistrate, Narayanpet, Mahaboobnagar District (for short, 'the trial Court'), registered for the offences punishable under Sections 188, 341, 290 and 291 of I.P.C. and Sections 30 and 32 of the A.P. Police Act.

2. Heard learned counsel for the petitioner and learned Public Prosecutor, appearing for the respondent – State.

3. The allegations are that the Petitioner/A-2 along with other accused took out procession, on their permitted canvassing vehicle, on a particular route, and on the request, the S.D.P.O. Narayanpet, also accorded permission for the procession to be taken on that route, but they proceeded towards main chowk through Hanuman temple, Godugugeri, for which route the prior permission was not obtained, and as such obstructed free passage of vehicles and public and have shown disobedience to the order.

4. Mostly, the contentions of the learned counsel for the petitioner are based on technical violations. He submits that the complaint for the offence under Section 188 I.P.C. has to be filed by the concerned public servant. In support he relies on a judgment of this Court in **Velagapudi Babu Rao Vs. State of A.P**¹; wherein, this Court held that the Sub-Inspector of Police could not be said to be a 'public servant' within the meaning of Section 195(1) of the Criminal Procedure Code. The complainant in this case is also a Sub-Inspector of Police. Hence, the offence under Section 188 of I.P.C. would not attract and the prosecution for the same cannot be sustained. With regard to the offence under Section 341 of I.P.C., the alleged acts of the petitioner cannot be considered for the offence under Section 341 I.P.C. as it is a provision of wrongful restraint, which is not

¹ 2012 (3) ALT (Crl.) 231

there in this case. The alleged acts of the petitioner with regard to the other offences under Sections 290 and 291 of I.P.C also does not attract to the petitioner. Except the charge sheet, mentioning that there was obstruction of free passage of vehicles, there is no allegation that there was any annoyance caused to the public as required to under Section 268 I.P.C. which defines public nuisance, which is punishable under Section 290 I.P.C. As regards the offence under Section 291 I.P.C., absolutely no allegation is found that there is any continuation of nuisance. When no nuisance as defined under the Code, is not made out, the question of continuation does not arise.

5. The other contention of learned counsel for the petitioner is that the complainant, who is the Police official, has also conducted investigation in this case and, hence, in view of the judgment of the Apex Court in **Megha Singh Vs. State of Haryana**², the prosecution in respect of those offences also cannot be sustained. The Apex Court in **Megha Singh**² observed that the Head Constable therein, who arrested the accused, conducted search and filed the complaint, also conducted the investigation and hence, he being the complainant, he should not have proceeded with the investigation of the case. The prosecution, hence, for all the offences gets vitiated.

6. Hence, in view of the above, this Court opines that continuation of further proceedings against the Petitioner/A-2 would result in sheer abuse of process of law.

7. Accordingly, the Criminal Petition is allowed and all further proceedings against the Petitioner/A-2 in C.C. No.19 of 2009, pending on the file of the Court of Judicial First Class Magistrate, Narayanpet, Mahaboobnagar District, are hereby quashed.

8. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

T.RAJANI, J

Date: 02.11.2018.

Note:
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² 1996 (11) SCC 709

SMT JUSTICE T.RAJANI**238****27112018****Note: L.R. Copy****CRIMINAL PETITION No.9488 OF 2011**

Date. 02.11.2018

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