

HON'BLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.6037 of 2019

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioner/A.1 seeking to quash the proceedings in C.C.No.398 of 2014 on the file of X Additional Chief Metropolitan Magistrate at Hyderabad (for short, '10th ACMM').

2. The case of the prosecution is that on 29.04.2014 while the defacto-complainant/the Asst.Sub Inspector of Police, along with Head constable and constables, was on patrolling duty in RC IX in the limits of Gandhi Nagar and when reached near LIC Building, they found Congress Party banners and also found that the petitioner opened Congress Party office without permission. On which they went on to the top of the house of the petitioner where they found Congress Party banners, flexi, and bags. On that, the defacto-complainant filed a report before the Sub Inspector of Police, Gandhi Nagar, with a request to take necessary action as the petitioner committed violation of Election Code. Basing on the said Complaint, the Sub Inspector of Police registered a case in Cr.No.172 of 2014 for the offence punishable under Section 188 IPC, and investigated the same and filed charge sheet against the petitioner and another before the 10th ACMM, Hyderabad.

3. Heard the learned counsel for the petitioner and the learned Addl.Public Prosecutor for the respondent State. Perused the material on record.

4. The learned counsel for the petitioner contends that the petitioner is innocent of the offences alleged against him and he is falsely implicated at the instance of political rivals. As per the First Information Report and charge sheet, it is alleged that the petitioner violated the order of the Election Commission by opening party office in his house and keeping Congress Party banners, flexi and bags without any permission but he has not opened any such office and kept any such material. He further contends that there is a bar to take cognizance of offence by the Court for the offence under Section 188 IPC except on a written complaint given by a Public Servant concerned. As per Section 195(1)(a) Cr.P.C. no Court shall take cognizance of any offence punishable 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. He further submits that in this case in the absence of any such written complaint lodged by the Public Servant concerned, no cognizance shall be taken by the Magistrate under Section 188 of IPC on the charge sheet filed by the Sub Inspector of Police, which is against the provisions of Section 195(1)(a) of CrPC. In view of the above, continuation of proceedings against the petitioner is nothing but harassment to him and abuse of process of the Court. Thus the petitioner prays to quash the proceedings in the aforesaid Calendar Case.

5. On the other hand, the learned Additional Public Prosecutor does not dispute the same.

6. Section 188 of IPC deals with Disobedience to order duly promulgated by public servant—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed.

7. Section 195 Cr.P.C. lays down that no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC (both inclusive), 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 present case, as purported in Section 195 Cr.P.C., there is no written complaint filed by any public servant with regard to the act of disobedience of the petitioner that it was causing obstruction or injury to any body. But the complaint filed is by the Asst.Sub Inspector of Police, Gandhi Nagar Police Station and the Court took cognizance of the offence under Section 188 IPC against the petitioner. In this regard, the Hon'ble Supreme Court in **Daulat Ram Vs. State of Punjab**¹ held that the prosecution under Section 182 IPC must be on a complaint in writing by the Tahasildar (Public Servant). The said

¹ AIR 1962 SC 1206

bar against the courts for taking cognizance of the offence punishable under Section 182 of IPC, except in the manner provided by Section 195 of the CrPC, equally applies to the offence under Section 188 IPC also. In this case, there is no such written complaint was lodged by any public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, in view of the bar under section 195(1)(a) of the Cr.P.C., the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 IPC on the report submitted by the Asst.Sub-Inspector of Police, Gandhinagar. Therefore, the cognizance taken is contrary to the specific bar envisaged under section 195(1)(a) of the Cr.P.C. Further the witnesses cited on behalf of the prosecution during investigation only four witnesses viz; one Assistant Sub Inspector - the defacto-complainant, one Head Constable, one Constable and one Home Guard, were examined and no other witnesses were examined complaining any inconvenience caused by the petitioner or any other person through him. As all the witnesses examined are only police personnel, continuing the case would be a futile exercise.

9. For the foregoing reasons, in my considered view, continuing the proceedings in the present case is nothing but abuse of process of law and would ultimately result in miscarriage of justice.

10. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.398 of 2014 on the file of X Additional Chief Metropolitan Magistrate at Hyderabad against the petitioner/accused are quashed.

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

JUSTICE G. SRI DEVI

Dt.24.09.2019.
Vvr



HON'BLE JUSTICE G. SRI DEVI



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Dt.24.09.2016

Vvr