

HON' BLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.7542 of 2019

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners/ A.1 and A.2 seeking to quash the proceedings in C.C.No.23 of 2019 on the file of the Trial of Special Sessions Court for MP/ MLAs, Hyderabad at Nampally.

The case of the prosecution is that on 22.04.2014 at about 12.30 hours while the de facto complainant/ Police Constable 9313 f Bowenpally Police Station, along with Head constable, was on patrolling duty in BC-11 and when they reached near Hasmathpet Cross Road, they found that the petitioners along with about 200 members were campaigning bike rally from Hasmathpet Cross Road to new Bowenpally Cross Road, in connection with coming General Election, 2014. When he asked for permission, they gave a permission copy and on perusal of the said permission it was found that they got permission from ACP Kukatpally, who is the Nodal Officer, but Hasmathpet and Bowenpally areas are not mentioned in the said permission. As such, their bike rally from Hasmathpet Cross Road to New Bowenpally Cross Road is without permission and violated the Model Code of Conduct. Basing on the said Complaint, the Sub Inspector of Police registered a case in Cr.No.168 of 2014 for the offences punishable under Section 188 IPC and 21/ 76 of City

Police Act and investigated the same and filed charge sheet against the petitioners.

Heard the learned counsel for the petitioners; the learned Additional Public Prosecutor for the respondent State and perused the material on record.

The learned counsel for the petitioners contends that the petitioners are innocent of the offences alleged against them and they are falsely implicated at the instance of political rivals. As per the First Information Report and charge sheet, it is alleged that the petitioner s violated the permission granted by the ACP, Kukatpally, who is a Nodal Officer, in conducting bike rally from Hasmathpet Cross Road to New Bowenpally Cross Road. 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 I.P.C. and 21/76 of City Police Act 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 petitioners is nothing but harassment to them and abuse of process of the Court. Thus the petitioners pray to quash the proceedings in the aforesaid Calendar Case.

The learned Additional Public Prosecutor does not dispute the same.

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.

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.

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 petitioners that it was causing obstruction or injury to any body. But the complaint filed is by the Police Constable of Bowenpally Police Station and the Court took cognizance of the offence under Section 188 IPC and 21/76 of City Police Act against the petitioners. 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 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 Cr.P.C., 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 Police Constable, Bowenpally. 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 Police Constable-the defacto-complainant, one Head Constable, one Sub-Inspector of Police, were examined and no other

¹ AIR 1962 SC 1206

witnesses were examined complaining any inconvenience caused by the petitioners or any other person through them. As all the witnesses examined are only police personnel, continuing the case would be a futile exercise.

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

Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.23 of 2019 on the file of the Trial of Special Sessions Court for MP/MLAs, Hyderabad at Nampally against the petitioners/ A1 and A2 are hereby quashed.

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

10.12.2019
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JUSTICE G. SRI DEVI