

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 1297 OF 2023

Between:

1. Kola Ramaswamy, S/o.Guruvaiah, Aged about 48 years, Occ. Pvt.Employee, R/o.H.No.7-71, Chaitanya Nagar, Tadakamalla Road, Miryalaguda town, Nalgonda District.
2. Kola Padma, W/o.Rama Swamy, Aged about 44 years, Occ. House wife, R/o.H.No.7-71, Chaitanya Nagar, Tadakamalla Road, Miryalaguda town, Nalgonda District.

...PETITIONERS/ACCUSED Nos.1 & 2

AND

1. The State of Telangana, Rep. by its Public Prosecutor High Court Buildings, Hyderabad.
2. The Miryalaguda Municipality, Rep.by its Town Planning Building overseer Viz., Smt.G.Pavani, W/o.Ramakrishna, Aged about 43 years, R/o.Miryalaguda Who is authorized by the Municipal Commissioner.

...RESPONDENT/COMPLAINANTS

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to Quash the proceedings against the petitioners in C.C.No.85 of 2014 on the file of the I Additional Judicial Magistrate of First Class at Miryalaguda, Nalgonda District.

I.A. NO: 1 OF 2023

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings including appearance of the Petitioner in C.C.No.85 of 2014 on the file of the I Additional Judicial Magistrate

4. Due procedure was followed under the A.P. Municipalities Act by giving notice to the petitioners before filing the present charge sheet (complaint) by the Town Planning & Building Overseer.

5. The complainant on behalf of Municipality is Town Planning & Building Overseer. It is mentioned in the charge sheet (complaint) that the said Town Planning & Building Overseer was authorized by the Commissioner of Miryalaguda Municipality, in accordance with Section 56(iii) of the A.P. Municipalities Act, 1965 to prosecute the accused under Section 366 of the A.P. Municipalities Act.

6. The two grounds urged by the petitioners are that 1) the complainant was not authorized in accordance with Section 366 of the A.P. Municipalities Act and 2) the complaint is barred by limitation.

7. Section 366 of the A.P. Municipalities Act reads as follows;

"366. Persons empowered to prosecute:-

Subject to the provisions of Section 365, no person shall be tried for any offence against the provisions of this Act, or of any rule or bye-law made under it, unless complaint is made by the Commissioner or by a person expressly authorized in this behalf by the Council within three months of the commission of the offence. But nothing therein shall affect the provisions of the [(Code of Criminal Procedure, 1973)(Central Act 2 of 1974)], in

regard to the powers of certain Magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion:

Provided that failure to take out a licence, obtain permission or secure registration under this Act shall, for the purposes of this section, be deemed a continuing offence until the expiration of the period, if any, for which the licence permission or registration is required and if no period is specified, complaint may be made at any time within twelve months from the commencement of the offence"

8. As evident from the above provision, a complaint can only be made directly by the Commissioner or by a person who has been expressly authorized by the Council within three months of the commission of the offence. Section 5 of the said Act defines who forms the council. The Council consists of elected members who are notified by the Government from time to time. The Member of Legislative Assembly represents the Constituency for which a Municipality forms part and others including the Commissioner.

9. It is specifically mentioned that authorization to file the complaint was given by the Commissioner for prosecution. Section 366 of the Act prohibits prosecution of a person unless a complaint is directly made by the Commissioner or a person expressly authorized by the Council. Since there is no authorization given to the complainant who is the

Town Planning & Building Overseer by the council, the charge sheet (complaint) is bad in law and liable to be quashed.

10. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.85 of 2014 on the file of I Additional Judicial Magistrate of First Class at Miryalaguda, Nalgonda District, against the petitioners-accused Nos.1 and 2, are hereby quashed.

Miscellaneous Petitions, if any, pending, shall also stand closed.

//TRUE COPY//

Sd/-N.SRIHARI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The I Additional Judicial Magistrate of First Class at Miryalaguda, Nalgonda District.
2. One CC to Sri Hari Kishan Kudikala, Advocate [OPUC]
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. Two CD Copies
gbr



HIGH COURT

DATED: 08/02/2023

ORDER

CRLP.No.1297 of 2023



ALLOWING THE CRIMINAL PETITION

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P. M. A.
13/3/2023