

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

**FRIDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 4031 OF 2023

Between:

1. Mohd. Ali Pasha, S/o Mohd Abbas Ali Aged about 42 years, Occ. Construction Supervisor, R/o H.No.14-12-418/H/120, Baba Nagar, Chandrayangutta, Hyderabad
2. Mujammil Junaid, S/o Late Mohammed Junaid, Aged about 40 years, Occ. Business, R/o Near Firdous Masjid, Backside of Priya Theater Malleshpally, Hyderabad
3. Masood Junaid, S/o Late Mohammed Junaid, Aged about 42 years, Occ. Business, R/o Near Firdous Masjid. Backside of Priya Theater Malleshpally, Hyderabad
4. Abdul Samad, S/o Late Mohammed Junaid, Aged about 48 years, Occ. Business, R/o Near Firdous Masjid, Backside of Priya Theater Malleshpally, Hyderabad
5. Mohd. Abdul Mujahed, S/o late Mohd Majid Aged about 47 years, Occ. Pvt Teacher, R/o H.No.10-5-399/ 1/A, First Lancer, Humayun Nagar, Hyderabad
6. Syed Feroz, S/o Late Sved Hafeezuddin Aged about 42 years, Occ. Business R/o H.No.18-10-204, Barkas, Hyderabad
7. Mohd Bin Ahmed, S/o Ahmed Bin Abdul Aged about 50 years, Occ. Business, R/o H.No.18-10-204, Barkas, Hyderabad

...PETITIONER/ACCUSED No.s 1 to 4, 6 to 8

AND

1. The State of Telangana, Rep. by the Public Prosecutor, High Court at Hyderabad.
2. Sri G. Vijayanand, SI of Police, Habeebnagar Police Station Hyderabad

...RESPONDENT/DEFACTO COMPLAINANT

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 call for the records and quash the proceedings against the Petitioners/Accused Nos.1 to 4, 6 to 8 in CC.No. 6699 of 2020 on the file of Hon'ble XVI Additional Chief Metropolitan Magistrate at Hyderabad.

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 dispense with filing of certified Copy of Order in CC.No.6699 of 2020 on the file of Hon'ble XVI Additional Chief Metropolitan Magistrate at Hyderabad.

I.A. NO: 2 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 stay all further proceedings including appearance of the Petitioners/ Accused Nos.1 to 4, 6 to 8 in CC.No. 6699 of 2020 on the file of Honble XVI Additional Chief Metropolitan Magistrate at Hyderabad.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of M/s. M. A. K MUKHEED, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No.1 and None appeared for the Respondent No. 2.

The Court made the following:

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.4031 OF 2023****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners – Accused Nos.1 to 4 and 6 to 8 seeking to quash the C.C No.6699 of 2020 pending on the file of Station House Officer, Habeebnagar Police Station, Hyderabad District. The offences alleged against the petitioners are under Sections 188, 269, 270 of Indian Penal Code and Section 3 of Epidemic Disease Act 1897.

2. Heard learned counsel for the petitioners – Accused Nos.1 to 4 and 6 to 8 and learned Additional Public Prosecutor for the respondent No.1 – State. Perused the record.

3. The Habeebnagar police filed the charge sheet against the petitioners on the ground that these petitioners were members of the Tabligi Jamath and went to Delhi and stayed there and attended the meeting and came back to Hyderabad on 18.03.2023. The petitioners were being prosecuted for the reason of violating the State Government orders issued during the Covid period.

4. Learned counsel appearing on behalf of the petitioners would submit that for criminal prosecution under section 188 of IPC, a private complaint has to be filed by the public servant and the cognizance cannot be taken by the learned Magistrate.

5. On the other hand learned public prosecutor submits that it is a case to be decided by the Trial Court.

6. Under section 195(a)(1) of Crpc, the Court is prohibited from taking cognizance of the offence under section 188 of IPC. Accordingly the cognizance is bad in law. To attract an offence under section 269 of IPC, a person must have unlawfully or negligently done any act having reason to believe that it is likely to spread the infection of any disease dangerous to life. Since the petitioners travelled to Delhi and came back to Hyderabad violating the Government orders, it is a consequence of violation of the said order. None of the petitioners were either tested or any evidence is collected that the said pandemic had spread because of petitioners or these petitioners were infected with covid. Therefore, an offence under Section 269 is not attracted. For the offence under section 270 of IPC, act should be malignantly done knowing or having reason to believe that it is likely to spread the infection. Travelling

from Delhi would not amount to malignant act in order to spread infection.

7. Accordingly, the criminal petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- B. SARASWATHI
ASSISTANT REGISTRAR

//TRUE COPY//

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SECTION OFFICER

To,

1. The XVI Additional Chief Metropolitan Magistrate at Hyderabad
2. The Station House Officer, Habeebnagar Police Station, Hyderabad
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad (OUT).
4. One CC to SRI. M. A. K. MUKHEED, Advocate [OPUC]
5. Two CD Copies

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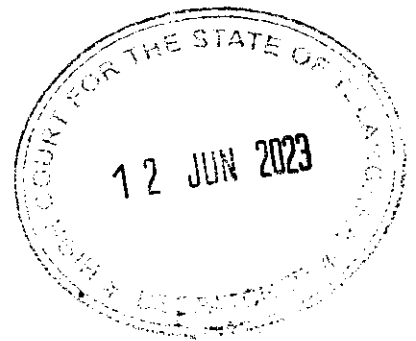
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V. S. S.

HIGH COURT
DATED:21/04/2023

ORDER

CRLP.No.4031 of 2023



Crl.P is allowed

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VLW
7/6/23