

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
THE HON'BLE SRI JUSTICE NINALA JAYASURYA
CRIMINAL PETITION No.2145 of 2021

Between:-

Venkateswara Rao Kesineni Petitioner

And

The State of Andhra Pradesh.,
Rep.by its Public Prosecutor & another Respondents

Counsel for the Petitioner : Mr.G.V.Ramakrishna

Counsel for the Respondents : Assistant Public Prosecutor

ORDER:

Heard learned counsel appearing for the petitioner. Also heard learned Assistant Public Prosecutor appearing for the respondents.

2. The present Criminal Petition is filed seeking to quash F.I.R.No.247 of 2020 on the file of Vijayawada II Town Police Station, Vijayawada City registered against the petitioner for the alleged offences under Sections 188 and 269 of Indian Penal Code (for short 'IPC').

3. As per the First Information Report, the 2nd respondent herein, who is working as Sub-Inspector of Police, II Town Police Station, Kothapeta, Vijayawada City was patrolling along with her staff for implementation of orders issued by the Government of Andhra Pradesh for containment, control and prevention of Covid-19 and when she reached Gujjuri Yallaroo Market area and opposite to Kundela Market at 47th Division of K.L.Rao

Nagar, Chittinagar, Vijayawada, the petitioner/accused No.1 and other persons were distributing vegetables in violation of Lockdown Rules, acting negligently and thereby causing spreading of Covid-19 virus and also obstruction to traffic.

4. The learned counsel for the petitioner submits that the registration of F.I.R., at the behest of the 2nd respondent is not sustainable in Law in the light of the bar contained under Section 195 of Criminal Procedure Code (for short 'Cr.P.C.'). In elaboration, he submits that no Court shall take cognizance of an offence under Section 188 of IPC, except upon the complaint in writing of the public servant concerned and initiation of action on the basis of complaint/report of the 2nd respondent is not legally sustainable. The learned counsel also submits that when the very initiation of action for the offence under Section 188 of IPC is not sustainable in Law, the other offence i.e., Section 269 of IPC, which is incidental/ancillary also cannot be investigated into. Placing reliance on the decision in **Paiaavula Keshavulu v. State of A.P. & Another**¹ and Order dated 26.09.2019 in Criminal Petition No.1541 of 2019, the learned counsel seeks to allow the Criminal Petition.

5. On the other hand, the learned Assistant Public Prosecutor opposing the said submissions contends that the 2nd respondent is justified in registering a complaint against the petitioner as there is violation of the

¹ 2016(2) ALT (CrI.) 74 (A.P.)

orders promulgated by the Government to prevent the spread of Covid-19. He submits that the petitioner instead of obeying the said orders have violated the same and thereby acted in a negligent manner to spread virus. He firmly contends that insofar as Section 269 of IPC is concerned, the said offence is cognizable and therefore, the police is competent to investigate into the matter and prays for dismissal of the Criminal Petition.

6. This Court has considered the submissions made and perused the material on record. Before dealing with the rival contentions, it may be appropriate to refer to the relevant provisions of Law.

Section 188 of IPC deals with disobedience to order duly promulgated by public servant.

Section 195 of Cr.P.C., *inter alia* contemplates that (1) No Court shall take cognizance:

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i).....

(ii).....

(iii).....

7. Thus, it is clear that in terms of Section 195 of Cr.P.C., No Court shall take cognizance of an offence under Section 188 of IPC, except on the complaint in writing of the public servant concerned.

8. In the present case, the complaint is filed by the Sub-Inspector of Police/2nd respondent, who is not the person who promulgated prohibitory order or a person to whom such a public servant is administratively subordinate.

9. In **Paiaavula Keshavulu's case** referred to supra which was followed in Criminal Petition No.1541 of 2019, a learned Judge was dealing with a matter where the petitioner therein was charge sheeted for the offences under Sections 188 and 283 of IPC. In the said case, there was no complaint by the public servant and the Sub-Inspector of Police filed the Charge Sheet. The learned Judge after considering the matter, quashed the proceedings against the petitioner therein, *inter alia* opining as follows:

"3.....In any event, the main offence is under Section 188 IPC and the offence alleged under Section 283 IPC is only incidental to the main offence. The main offence, as already stated, is allegedly disobedience to the orders duly promulgated by the Director General of Police. Section 195 of the Cr.P.C., lays down that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Here, there is no complaint filed by any public servant. The Sub-Inspector of Police filed the charge sheet. In *Daulat Ram v. State of Punjab*(1) AIR 1962 SC 1206 the

Supreme Court held that the prosecution under Section 182 must be on a complaint in writing by the Tahsildar (public servant). In view of that absolute bar against the Courts for taking cognizance of the offence punishable under Section 182 of the IPC, except in the manner provided by Section 195 of the Cr.P.C. The judgment equally applies to the offence under Section 188 also. In this case, there is no complaint in writing by the 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 198 IPC on the report submitted by the Sub-Inspector of Police, Gooti Police Station. Therefore, the cognizance is taken contrary to the specific bar envisaged under Section 195(1)(a) of the Cr.P.C.”

10. In the light of the above stated legal position, continuation of proceedings/investigation against the petitioner is not tenable. Though the learned Assistant Public Prosecutor made all efforts to impress upon that the police can investigate into the matter in respect of the offence under Section 269 of IPC, as the said offence is incidental to the main offence i.e., Section 188 of IPC, this Court is not inclined to appreciate the same. As laid down in the above referred orders, once main offence itself is registered contrary to the legal position, the ancillary/incidental offence also cannot be proceeded with. The decisions relied on by the learned counsel for the petitioner, in the considered opinion of this Court applies in all fours to the case on hand. In such view of the matter, interference by this Court is warranted, as continuation of investigation would amount to abuse of process of Law.

Therefore, the submissions made by learned Assistant Public Prosecutor are rejected.

11. For the reasons stated supra, the complaint lodged against the petitioner *vide* F.I.R.No.247 of 2020 on the file of Vijayawada, II Town Police Station, Vijayawada, is hereby quashed and the Criminal Petition is allowed, accordingly.

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

JUSTICE NINALA JAYASURYA

Date: 04.07.2023

BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

Crl.P.No.2145 of 2021

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