

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION NO.4633 OF 2023

ORDER:-

The Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'), is filed to quash the proceedings in C.C.No.109 of 2020 on the file of the Special Judicial Magistrate of First Class for Railways, Railway Court, Guntur.

2. A charge sheet has been filed as against the petitioner for the offences punishable under Sections 188 and 341 of the Indian Penal Code, 1860 (for short, 'IPC'). The allegations, in brief, of the charge sheet are as follows.

During the general elections, 2014 in the State of Andhra Pradesh, the petitioner/accused began election campaign on behalf of National Congress Party (Indhira), and during his schedule, on the night of 27.04.2014, the

petitioner/accused took out rally on ring road and continued his speech after 10.45 PM and caused much traffic disruption on road and inconvenience to public. As per the Election Code, any canvassing or publicity must be closed by 10.00 PM. The petitioner/accused violated the Order promulgated by the Election Commission of India and wrongfully restrained traffic.

Based on a report lodged by L.W.1-A.Ravinder, police registered a case in crime No.284 of 2014 of Arundelpet police station for the offences punishable under Sections 341 and 188 IPC, and after completion of investigation, filed the charge sheet. The same was taken on file as C.C.No.260 of 2019 on the file of the V Additional Judicial Magistrate of First Class, Guntur, and later, it was transferred to the file of the learned Special Judicial Magistrate of First Class for Railways,

Railway Court, Guntur and renumbered as C.C.No.109 of 2020.

3. Learned counsel for petitioner contended that the learned Magistrate erred in taking cognizance of the offence punishable under Section 188 IPC basing on a charge sheet filed by police. According to the learned counsel, there is a procedure contemplated under Section 195 (1) (a) (i) CrPC, which stipulates that 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, and there is clear violation of the procedure that has been contemplated under Section 195 CrPC.

It is his further submission that even if the entire accusations in the charge sheet are accepted as true and

correct, no *prima facie* case for the offence punishable under Section 341 IPC is made out, and hence, continuation of the impugned proceedings is nothing but abuse of process of Court. Hence, he prays to quash the impugned proceedings.

4. On the other hand, learned Special Assistant Public Prosecutor appearing for respondent fairly conceded that the procedure followed by the learned Magistrate in taking cognizance of the offence punishable under Section 188 IPC is not in consonance with law. As regards the other contention, he submits that the contentions raised are all disputed questions of fact and the same cannot be decided in a proceeding under Section 482 CrPC.

5. Heard. Perused the record.

6. Section 482 Cr.P.C. envisages three circumstances under which inherent jurisdiction can be exercised viz. (1) to give effect to an order under the code; (2) to prevent abuse of process of court; and (3) to otherwise secure ends of justice. This Court is also conscious of the fact that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the report. On this aspect, it is pertinent to refer to the judgment of the Hon'ble Apex court in *State of Haryana Vs. Ch.Bhajanlal and ors.*¹, wherein the Apex Court held,

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated

¹ **AIR 1992 SC 604**

by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. The allegation is that during the general elections, 2014 in the State of Andhra Pradesh, the petitioner/accused campaigned on behalf of National Congress Party (Indhira), and on the night of 27.04.2014, the petitioner/accused took out rally on ring road and continued his speech after 10.45 PM and caused much traffic disruption on road and inconvenience to public. It is the further case of prosecution that as per the Election Code, any canvassing or publicity must be closed by 10.00 PM, and hence, the petitioner/accused violated the Order promulgated by the Election Commission of India and wrongfully restrained traffic. Based on a report lodged by L.W.1-A.Ravinder, police registered the aforesaid

crime, investigated into and laid a charge sheet, basing on which cognizance was taken by the learned Magistrate.

8. Insofar as the offence punishable under Section 188 IPC, there is a statutory bar under Section 195 (1) (a) (i) CrPC to take cognizance of the said offence basing on a charge sheet. Section 195 (1) (a) CrPC reads as follows:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(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;

It is crystal clear that there is a bar under Section 195 (1) (a) (i) CrPC for taking 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. 'Complaint' as defined under Section 2 (d) CrPC means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Court, that some person, whether known or unknown, has committed an offence, but does not include a police report. In the case on hand, without there being a 'complaint' by the authority concerned, the procedure adopted by the learned Magistrate in taking cognizance of the said offence

basing on a charge sheet filed by police, is in violation of Section 195 (1) (a) (i) CrPC.

9. As per the procedure prescribed, police are not empowered to investigate into the offence punishable under Section 188 IPC and file charge sheet, basing on a police report. A perusal of the record goes to show that police registered the case basing on a report lodged by 2nd respondent, investigated into the matter and filed charge sheet, and thereafter, the learned Magistrate took cognizance of the offence. Under Section 195 (1) (a) (i) CrPC, a public servant concerned or of some other public servant to whom he is administratively subordinate has to file a written 'complaint', to enable the Magistrate to take cognizance of an offence punishable under Section 188 IPC. In the case on hand, since the learned Magistrate has taken cognizance of the offence pursuant to a charge sheet filed by police, without there being any

such 'complaint', the whole procedure adopted by the learned Magistrate is not in consonance with law.

10. In view of the aforesaid facts and circumstances of the case, this Court feels that taking cognizance by the learned Magistrate of the aforesaid offence under Section 188 IPC would amount to abuse of process of Court.

11. Insofar as the offence punishable under Section 341 IPC, which is in consequence of disobedience punishable under Section 188 IPC. In the case on hand, the offence of wrongful restraint punishable under Section 341 IPC alleged to have committed by the petitioner on account of his disobedience to the Order, which is punishable under Section 188 IPC and the same is not an independent offence. A perusal of the charge sheet goes to show that

no independent witnesses were examined to speak about the traffic inconvenience, except a bald statement made by the informant and police force. Even assuming, without admitting, the accusation that has been made insofar as the offence under Section 341 IPC i.e. there was traffic disruption on the road and because of the same there was much inconvenience to public at large, to be true, this Court is of the opinion that still it would not come within the purview of Section 341 IPC, for the reason that there is absolutely no wrongful restraint for the public. It is only because of the traffic congestion, delay appears to have occurred for the public at large in reaching their respective destinations. The said aspect of wrongful restraint would not attract. In *N.T.Rama Rao v. State of A.P. and another*², this Court, in similar

² Order dated 17.09.2009 in Criminal Petition No.5323 of 2009

circumstances, quashed the impugned proceedings therein (paragraphs 5 and 6).

“5) Even if the allegation that the petitioner and others conducted public meetings at three road junctions contrary to the permission accorded for conducting of a public meeting only at one specified place is true, such a direction under Section 30 of the Police Act, 1861 could have been given only by the Superintendent or the Assistant Superintendent of Police of the district but not by any of their subordinates. If such a permission is granted under Section 30 of the Police Act, 1861 and is violated, Section 195(1)(a) of Code of Criminal Procedure mandates that the complaint in this regard has to be made by the public servant concerned or some other person to whom such a public servant is administratively subordinate to enable any Court to take cognizance of an offence under Section 188 of Code of Criminal Procedure. In the present case, the charge sheet was filed by the Sub Inspector of Police who could not have been the authority to grant permission for the public meeting and therefore, the complaint/charge sheet is in violation of the mandatory provision of Section 195(1)(a) of Code of Criminal Procedure.

6) That apart, the offence alleged to have been committed under Section 283 of the Indian Penal Code by the petitioner and others is obviously in consequence to the alleged offence under Section 188 of Indian Penal Code and is not independent of the same. Even otherwise, the conduct of public meeting at three road junctions or obstruction to the traffic could not have been considered as causing

any danger or injury to any person. In so far as the obstruction in any public way is concerned, which can also be covered by Section 283 of the Indian Penal Code, the charge sheet cites only one witness to speak about the traffic jam caused by the road show. But, when the conduct of the public meeting at least at one place has been permitted and if the gathering for that public meeting resulted in any inconvenience by way of obstructing the traffic, the same cannot be considered to be with the necessary guilty mens rea to construe the existence of an offence punishable under Indian Penal Code. Under the circumstances, none of the offences alleged can be said to have any reasonable basis and in any view, the complaint/charge sheet being in violation of Section 195(1)(a) of Code of Criminal Procedure, has to fail.”

Therefore, even if the entire accusations made against the petitioner are taken as true and correct, no *prima facie* case for the offence punishable under Section 341 IPC has been made out against the petitioner. Case of the petitioner would squarely come within the 1st category of cases enumerated in the aforesaid extract in *State of Haryana v. Ch. Bhajanlal and others* (1 supra). Hence, continuation of the impugned proceedings

against the petitioner is nothing but abuse of process of Court.

12. Accordingly, the Criminal Petition is allowed, quashing the proceedings in C.C.No.109 of 2020 on the file of the Special Judicial Magistrate of First Class for Railways, Railway Court, Guntur.

Miscellaneous petitions, if any pending, in the Criminal Petition, shall stand closed.

JUSTICE K. SREENIVASA REDDY

25.07.2023
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THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION NO.4633 OF 2023

Date: 25.07.2022

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