IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

Crl.P. No.459 of 2020

Between:

Gade Venkateswara Rao.

.... Appellant

And

1. The State of A.P and another

....Respondents.

Date of Order pronounced on : 09.11.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers may be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: Yes/No

3. Whether the Lordship wishes to see the fair copy of the Judgment? Yes/No

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VENKATA JYOTHIRMAI PRATAPA, J

***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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.... Appellant

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! Counsel for the Petitioner : Sri Turaga Sai Surya

Counsel for the Respondents: Ms. D. Prasanna Lakshmi,
Learned Asst. Government Pleader

<Gist :
>Head Note:
? Cases referred:

1. 1992 Supp. (1) SCC
2. (2020) 10 SCC 180
3. (2017) 3 SCC 286
4. AIR 1962 SC 1206
5. (2009) 6 SCC 475

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Criminal Petition No. 459 of 2020

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973[1] is filed to quash the proceedings against the petitioner/accused in C.C.No.1506 of 2019 on the file of VI Additional Junior Civil Judge, Guntur, Guntur District.

2. Heard Sri Turaga Sai Surya, learned counsel for the petitioner, and Ms. D. Prasanna Lakshmi, learned Assistant Government Pleader representing the State.

The crux of the case is, as follows;

3. A report dated 25.03.2019 was given by the M.P.D.O., Prattipadu stating that he was the in-charge of Model Code of Conduct team of Prattipadu Assembly Constituency; that on 25.03.2019 barricades were erected on the main road on the occasion of road show being conducted by the President of Janasena party i.e., Sri Pawan Kalyan violating the Election Code of Conduct, which caused obstruction of the vehicular traffic; that Accused having taken

[1] In short ' Cr.P.C'

permission for road show conducted meeting, thereby committed the offences under Sections 341 and 188 of the Indian Penal Code.[2]

4. A charge sheet came to be filed against the petitioner for the offences punishable under Sections 188 and 341 of IPC with the following allegations:

> *" In view of forthcoming of General Elections, 2019, the M.P.D.O., Prattipadu i.e., the Complainant, was appointed as Incharge of Model Code of Conduct team of Prattipadu. The accused having taken permission for road show, instead of that organized Janasena Party Meeting by placing barricades on the main road and thereby wrongfully restrained public vehicle traffic from 1.00 pm to 05.30 pm without any permission of Election Commission of India while the Model Code of Conduct is in force. The Complainant observed the same and captured the videos with the assistance of Sri Gopi Sai, Videographer, and represented a report. "*

5. Basing on such report, the Police registered the same as a case in Cr.No.58 of 2019 for the offences punishable under Sections 341 and 188 of IPC of Prattipadu Police Station. The Police have visited the scene of offence, drafted the rough sketch, examined the witnesses i.e., the Complainant and the Police Personnel, who assisted the Complainant. After completion of the investigation, the Police laid charge sheet against the petitioner for the offences punishable under Sections 341 and 188 of IPC.

[2] for short ' I.P.C'

6. Learned counsel for the petitioner would submit that the learned Magistrate erred in taking cognizance of the offence under Section 188 of I.P.C., basing on a Charge sheet filed by the Police. He would contend that the procedure contemplated under Section 195 (1) (a) (1) of the Cr.P.C., 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 on there being clear violation of the procedure that has been contemplated under Section 195 Cr.P.C. Learned counsel submits that the even if entire accusation in the charge sheet is accepted as gospel truth, no *prima facie* case is made out against the petitioner for the offence punishable under Section 341 IPC. Hence, continuation of the impugned proceedings is nothing but abuse of process of Court. Accordingly, he prays to quash the proceedings against the petitioner.

7. *Per contra,* learned Assistant Public Prosecutor would fairly submit that the procedure followed by the Court in taking cognizance of the offence punishable under Section 188 of IPC is not in accordance with law. She further submits that the contentions raised in the present Petition are all disputed

questions of fact and the same cannot be decided in a proceeding under Section 482 Cr.P.C.

8. Section 482 Cr.P.C. powers must be invoked for compelling reasons of abuse of process of law or glaring injustice or violation of sound principles of criminal jurisprudence. Specific circumstances warranting invocation of powers under Section 482 have been strongly emphasized in a catena of decisions. To cite a few, ***State of Haryana & others v. Bhajanlal & others***[3] at paras 102 and 103, ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & others,***[4] at para 57.

9. While exercising jurisdiction under Section 482 Cr.P.C. this Court cannot conduct mini trial to find out the reliability or genuineness or otherwise of the allegations, made in the report. There is no dispute about the fact that because of the General Elections, the Code of Conduct was in force, at the time of the alleged incident. It is alleged that having taken permission for road show, the petitioner instead had conducted a meeting, thereby committed the offence punishable under Section 341 IPC and that the petitioner violated the Order promulgated by the Election Commission of India and wrongly restrained traffic.

[3] 1992 Supp. (1) SCC
[4] (2020) 10 SCC 180

10. It is apt to mention that there is a statutory bar under Section 195 (1) (a) (i) of Cr.P.C., which reads as follows;

> ***"Section 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;*
>
> ……..”

11. In ***Saloni Arora v. State (NCT of Delhi),*** [5] the Hon'ble Apex Court had settled the position of law concerning the mandatory application of Section 195 Cr.P.C. as follows;

> ***11.*** *It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action*

[5] (2017) 3 SCC 286

taken by the prosecution against the appellant insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in Daulat Ram [Daulat Ram v. State of Punjab, AIR 1962 SC 1206 : (1962) 2 Cri LJ 286] quoted above"

(Emphasis supplied)

12. The Hon'ble Supreme Court in ***Daulat Ram v. State of Punjab*,**[6] while dealing with an offence involving Section 182, held about the necessity to adhere to the procedure prescribed in Section 195, as follows;

4. *Now the offence under Section 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tahsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tahsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tahsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tahsildar was not filed at all, but a charge-sheet was put in by*

[6] **AIR 1962 SC 1206**

the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that Section 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tahsildar and he asked for "a calendar". This paper was filed along with the charge-sheet and it is stated that this satisfies the requirements of Section 195. In our opinion, this is not a due compliance with the provisions of that section. ***What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."***

(Emphasis supplied)

13. In catena of decisions, a coordinate bench of this Court in Crl.P.No.4633 of 2023, Crl.P.No.5323 of 2009, 3670 of 2013, 8597 of 2018 and 9236 of 2018 clearly held that the Police are not empowered to investigate into the offence punishable under Section 188 of IPC and file charge sheet basing on a police report.

14. In the light of the language employed in the legal provision and the precedents referred supra, it is vivid that there is a clear bar under Section 195 (1) (a) (1) of Cr.P.C. for taking cognizance of any offences punishable under Sections 172 to 188 of IPC, 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 apt to refer to the definition of complaint as contemplated in Cr.P.C., vide Section 2(d)

> "*Section 2 (d) of Criminal Procedure Code, 1973*
> "***complaint***" means any allegation made orally or in writing ***to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.***
> Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

15. Admittedly, in the present case, without there being a complaint by the authority concerned, the learned Magistrate took cognizance of the offence punishable under Section 188 of IPC basing on a charge sheet filed by the police, which is in utter violation of Section 195 1 (a) (i) of Cr.P.C. Meaning which, the

cognizance taken by the Magistrate is not in accordance with law and continuation of the proceedings against the petitioner for the offence under Section 188 of IPC would amount of abuse of process of the Court.

16. Coming to the offence punishable under Section 341 of IPC, it applies when any person is wrongfully restrained. Section 339 of IPC defines wrongful restraint as voluntary obstruction so as to prevent such person from proceeding in any direction, in which such person has right to proceed. The Hon'ble Apex Court in ***Keki Hormusi Gharda v Mehervan Rustom Irani***[7], has in the interpretation of Section 339 held as follows:

> *"14. The word `voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction."*
>
> (Emphasis supplied)

17. A look at the charge sheet, shows that no independent witnesses were examined to speak to the fact that accused committed wrongful restraint by conducting a meeting. No doubt, because of the alleged meeting said to have been conducted by the accused, there might be disruption of traffic on the road

[7] (2009) 6 SCC 475

which might have caused inconvenience. As no material is collected during the course of investigation to attract the offence under Section 341 IPC, the offence of committing wrongful confinement would not attract.

18. In that view of the matter, this Court finds it to be a fit case to exercise its jurisdiction vested under Section 482 of the Cr.P.C. In result, the present Criminal Petition is allowed, quashing the Proceedings in C.C.No.1506 of 2019 on the file of the VI Additional Junior Civil Judge, Guntur, Guntur District.

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

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VENKATA JYOTHIRMAI PRATAPA, J

Date: 09-11-2023.
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THE HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Crl.P.No.459 of 2020

Dt. 09-11-2023

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