

Ranganath and Another Vs. The State Through Devadurga Police Station

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Court : Karnataka Kalaburagi

Decided On : Apr-21-2016

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 200526 of 2016

Appellant : Ranganath and Another

Respondent : The State Through Devadurga Police Station

Judgement :

(Prayer: This Criminal Petition is filed under Section 482 of Cr.P.C. Pleased to Exercise the Inherent Power U/Sec. 482 Cr.P.C. Examine the Records and Quash the Proceedings Pending before in the Court of Civil Judge and JMFC at Devadurga, in C.C. No. 68/2016 (Crime No.30/2016), against the Petitioners, which is Registered for the Offence P/U/S 171(H) and 188 r/w 34 of IPC.)

1. Heard Sri Avinash Uplaonkar, learned counsel for the petitioners and the learned High Court Government Pleader.
2. A person by name Shivasharanappa Kattolli, Tahasildar Devadurga has lodged a complaint before the Devadurga police for the offences punishable under sections 171(H) and 188 of Indian Penal Code against the petitioners.
3. It is alleged in the complaint that, 27.01.2016 was the last date for submission of nomination for assembly bye-election of Devadurga. It is alleged that between

11.30 and 04.00 p.m. in the APMC yard of Devadurga, the petitioners have allowed the Congress-I and BJP party people to park 30-40 vehicles in the APMC yard. The petitioners are the competent persons who are in possession of the said APMC and they allowed the political parties to make use of the APMC yard for the purpose of election canvas etc. On the basis of said complaint, the police have investigated the matter and submitted charge-sheet and these petitioners are arrayed as accused Nos. 1 and 2.

4. Learned Magistrate has taken cognizance and ordered to issue summons to the petitioner and in that context, the entire proceedings were challenged before this Court seeking quashing of the entire criminal case.

5. Earlier the petitioners have approached this Court in Criminal Petition No. 200275/2016 and this Court has observed unless the Court look into the charge-sheet materials, question of quashing of FIR does not arise. Hence given opportunity to the petitioners to approach the Court later and the said Criminal Petition was disposed of accordingly.

6. The learned counsel appearing for the petitioner has strenuously contended that, Section-188 of IPC is an offence covered under Section 195 of Cr.P.C. According to Section 195 of Cr.P.C., the Court cannot take cognizance unless a public servant files a private complaint under Section 200 of Cr.P.C., therefore, registration of the case under Section 188 of IPC by the police is illegal. Secondly, the learned counsel contended that, Section 171(H) of IPC is a non- cognizable offence and the police cannot investigate the subject matter without the permission of the jurisdictional Magistrate under Section 155(2) of Cr.P.C. Though facts of this case attract the offences alleged, but the technicalities have to be examined by the Court.

7. As could be seen from the provision of Section 195 of Cr.P.C., it says that, -

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, 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) xxx xxx xxx xxx xxx

The above said provision clearly creates a statutory bar to the Court for taking cognizance unless the complaint in writing is made by the public servant concerned or some other public servant to whom he is administratively subordinate. In view of the above, the said provision takes away the general power of the Magistrate under Section-190 of Cr.P.C.

8. On perusal of the records, there is no complaint in writing lodged by the 2nd respondent before the jurisdictional Magistrate alleging the offence under Section 188 of IPC. On the other hand, he has submitted a report to the police for investigation. The registration of a case by the police under Section 188 of IPC itself is illegal. On the date of registration of the case itself, the bar under Section 195 of Cr.P.C. was operating and the police gets no jurisdiction even to register the case under Section 188 of IPC. Once an illegality perpetrates into the investigation, such investigation is hit by the statutory principles, then it cannot be construed as a legal proceeding or a legal investigation by the police. Therefore, as rightly contended by the learned counsel, the Magistrate could not have taken cognizance for the offence under Section 188 of IPC without there being a private complaint in writing by the public servant.

9. So far as it relates to Section 171(H) of IPC, the said provision says that,-

"Illegal payments in connection with an election,- Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or

procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

10. On a plain reading of the above said section, the punishment imposed is fine that may extend to Rs.500/-. Therefore, the said provision is categorized as non-cognizable offence under the classification of the offences in schedule-II to the Cr.P.C. When the offence is declared as non-cognizable in nature, Section 155(2) of Cr.P.C. bars the police to investigate such matter without the valid permission from the jurisdictional Magistrate. Section 155(2) of Cr.P.C. reads as follows:-

"155. Information as to non-cognizable cases and investigation of such cases, -

(1) xxx xxx xxx xxx xxx

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

xxx xxx xxx xxx xxx

11. It is an absolute bar which says that, no police officer shall investigate a non-cognizable case without the order of the Magistrate. In view of the above said factual and legal aspects, it is clear that registration of crime by the police under Section 188 of IPC is illegal and no permission has been taken by the police for the purpose of investigating the offence under Section 171(H) of Cr.P.C. Therefore, under the above said circumstances, the entire proceedings are vitiated by serious illegality. Therefore, the Magistrate ought not to have taken cognizance of the said offence.

12. In this background, this Court had an occasion to deal the similar matter in Writ Petition No.23611/2015 disposed of on 16.06.2015 between Sri. Manikanta Vs.

The State of Karnataka and others, wherein also the police have registered a case in Crime No.167/2014 for the offences punishable under Sections 78 and 79 of Karnataka Police Act, 1963 and also under Section 188 of IPC. The Court coming to the conclusion that the registration of the case under Section 188 of IPC becomes illegal as bar contained under Section 195 of Cr.P.C., held that the remaining provision under Sections 78 and 79 of the Karnataka Police Act could not have been investigated by the police without a valid permission from the jurisdictional Magistrate under Section 155(2) of Cr.P.C. Therefore, the Court has quashed such proceedings.

13. In view of the above said facts and circumstances and the observation already made by this Court in the above referred writ petition, I am also of the opinion that the proceedings in C.C. No.246/2013 on the file of the Civil Judge (Jr.Dn.) and JMFC, Yadgir, registered against the petitioner for the offences punishable under Section 171(H) of Cr.P.C. and 188 of IPC, deserves to be quashed. Otherwise, the same would amount to abuse of process of law. Hence, the following order:-

ORDER

The petition is allowed. The entire proceedings in C.C. No.68/2016 on the file on the file of the Civil Judge and JMFC, Devadurga, registered against the petitioners for the offences punishable under Sections 171(H) and 188 of Indian Penal Code, and all further proceedings are hereby quashed.

In view of disposal of this petition, I.A. No.1/2016 filed for stay does not survive for consideration. Accordingly, I.A. No.1/2016 dismissed as having become infructuous.

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