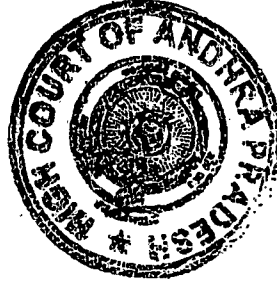


**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

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



**PRESENT**

**THE HONOURABLE MS JUSTICE B S BHANUMATHI**

**CRIMINAL PETITION NO: 2832 OF 2023**

**Between:**

**Bodella Srinivasulu @ Dilka Seena, S/o. B.C. Subbanna, Aged about 52 years, D. No.8/1391, Ambedkar Nagar, Gooty Town Anantapur District.**

**...PETITIONER/ACCUSED**

**AND**

**1. The State of Andhra Pradesh, Rep. by the Public Prosecutor, High Court of Andhra Pradesh at Amaravati.**

**...RESPONDENT**

**2. P. Sarath Chandra, Asst. Engineer, Municipality, Gooty, Flying Squad, municipality Gooty, Anantapur District.**

**...RESPONDENT/DE-FACTO 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 quash the entire proceedings in C.C. No.133 of 2023 on the file of the High Court of Judicial First Class Magistrate, Gooty, for the offences under Sections 188 and 171(H) of the Indian Penal Code, arising out of Crime No.197 of 2021 on the file of the Gooty Police Station, Ananthapuramu District, as against the Petitioner herein.

**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 the certified copies of in C.C. No.133 of 2023 on the file of the Honourable Court of Judicial First Class Magistrate Gooty that of photo copies of the same.

**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 grant stay of all further proceedings, as against the Petitioner herein, including the appearance of the petitioner herein in C.C. No.33 of 2023 on the file of the Hon'ble Court of Judicial First Class Magistrate, Gooty, for the offences under Sections 188 and 171(H) of the Indian Penal Code, arising out of Crime

no.197 of 2021 on the file of the Gooty Police Station, Ananthapuramu District, pending disposal of the above Criminal Petition.

This Petition coming on for hearing ,upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri VIVEKANANDA VIRUPAKSHA, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No.1.

**The Court made the following: ORDER**

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI**

**Criminal Petition No.2832 of 2023**

**ORDER:**

This Criminal Petition under Section 482 CrPC is filed by the petitioner with a prayer to quash the proceedings in C.C.No.133 of 2023 on the file of the Court of the Judicial First Class Magistrate, Gooty, arising out of Crime No.197 of 2021 of Gooty Police Station, registered for the offences under Sections 188 and 171-H IPC.

2. Heard *Sri Vivekananda Virupaksha*, learned counsel appearing for the petitioner and the learned Assistant Public Prosecutor appearing for the 1<sup>st</sup> respondent/State.

3. The case of the prosecution, in brief, is that on the occasion of municipal elections in Gooty Town, the 2<sup>nd</sup> respondent herein (*de facto* complainant) and LWs 1 to 4 were appointed as Flying Squad and that on 10.03.2021, at about 12.10 noon, LWs 1 to 4 found the petitioner/accused luring the voters by distributing Rs.500/- to cast their votes in favour of a party. It is further alleged that upon seeing LWs 1 to 4, the petitioner tried to escape, but he was apprehended and an amount of Rs.5,000/- and 3 pamphlets were seized from his possession. A case in crime No.197

of 2021 was registered by the Gooty police and charge sheet was filed.

4. According to the petitioner, there are inherent contradictions and discrepancies in the case set up by the prosecution in the First Information report and the charge sheet. Section 188 IPC is not attracted to the instant case for the reason that the procedure stipulated for invocation of Section 188 IPC is not followed by the respondents. Section 171-H IPC is a non-cognizable offence and accordingly, the police could not have conducted investigation without obtaining permission from the learned Magistrate, as required under Section 155 CrPC.

5. Learned Assistant Public Prosecutor submitted that the allegations make out the case against the petitioner and it is a matter of trial and it is premature to quash the proceedings at this juncture.

6. It is basically contended that taking cognizance of the offence punishable under Section 188 IPC without following the procedure under Section 195 CrPC itself is erroneous and also taking cognizance for the offence under Section 171-H IPC on the filing of charge sheet by the police is yet another illegality as it is a non-cognizable offence.

7. For better understanding, the relevant part of Section 195 CrPC is reproduced herein below:

**"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;

8. The word 'complaint' is defined under Section 2(d) of CrPC as follows:

2(d) **"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.

When the police forward report to a Magistrate under Section 173(2) CrPC, it is a 'police report' as defined under Section 2(r) CrPC as is specifically excluded from the definition 'complaint'.

Therefore, a Magistrate can take cognizance of offence under Section 188 IPC, only on the written complaint of the public servant

or other officer as stated therein, but not on the police report which is normally known as charge sheet. Thus, taking cognizance of the offence under Section 188 IPC without following the procedure under Section 195 CrPC is improper.

9. 'Non-cognizable offence' is defined under Section 2(l) CrPC and reads as follows:-

**'non-cognizable offence'** means an offence for which, and  
"non cognizable case" means a case in which, a police officer  
has no authority to arrest without warrant.

The first schedule to CrPC, set out what are cognizable or non-cognizable cases. Section 171-H IPC is shown as non-cognizable offence.

10. Section 155 CrPC provides that 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. As rightly argued, since the offence under Section 171-H IPC is a non-cognizable offence, the police cannot investigate without the order of the Magistrate under Section 155 (2) CrPC, taking cognizance for the offence under Section 171-H IPC basing on the charge sheet filed by the police by conducting investigation on the FIR registered is yet another illegality.

Therefore, continuance of proceedings in C.C.No.133 of 2023 on the file of the Court of Judicial First Class Magistrate, Gooty, for both offences under Sections 171-H and 188 IPC is nothing but an abuse of process of law and therefore, the proceedings are liable to be quashed.

11. Accordingly, the Criminal petition is allowed and the proceedings in C.C.No.133 of 2023 on the file of the Court of Judicial First Class Magistrate, Gooty, against the petitioner are hereby quashed.

Pending miscellaneous petitions, if any, shall stand closed.

Sd/- SHAIK MOHD. RAFI  
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Honourable Court of Judicial First Class Magistrate, Gooty, Ananthapur District.
  2. The Station House Officer, Gooty Police Station, Ananthapur District.
  3. One CC to Sri Vivekananda Virupaksha, Advocate [OPUC]
  4. Two CCs to GP for Public Prosecutor, High Court of Andhra Pradesh. (OUT)
  5. Two C.D. Copies
- Cnr

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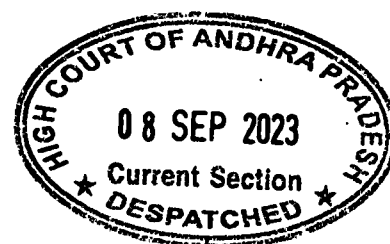
**HIGH COURT**

**DATED:28/04/2023**

**ORDER**

**CRLP.No.2832 of 2023**

7-copies  
P.B.K  
17/8/23



**ALLOWING THE CRIMINAL PETITION**