

IN THE HIGH COURT OF ANDHRA  
PRADESH :: AMARAVATI  
(Special Original Jurisdiction)



APHC010141212020

THURSDAY ,THE FIRST DAY OF 3396  
FEBRUARY  
TWO THOUSAND AND TWENTY  
FOUR

**PRESENT**

**THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL PETITION NO: 1888 OF 2020**

**Between:**

1. GATTINENI VIJAYA SAI, Father Name Ramesh Aged about 25yrs R/o. Enugupalem Village, Nadendla Mandal, Guntur Dt. Andhra Pradesh
2. Bandarupalli Satyanarayana, S/o. Jaganadam, aged about 48yrs, R/o Sathuluru Village, Nadendla Mandal, Guntur Dt. Andhra Pradesh

**...PETITIONER/ACCUSED(S)**

**AND**

1. THE STATE OF AP, Rep by its Public Prosecutor High court of Andhra Pradesh at Amaravathi, Guntur District.
2. THE SHO, Chilakaluripeta Town PS, Guntur Dt, Andhra Pradesh.

**...RESPONDENT/COMPLAINANTS**

Petition under Section 437/438/439/482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to Quash the proceeding in Crime No. 72 of 2020 of Chilakaluripet Town P.S, U/S 188, r/w34 IPC, Sec 34(A) of AP Excise ACT and Section 19 (A), 211, 212, of Ordinance no 2/2020 of APPR Amendment ACT 1994 by invoking the inherent jurisdiction conferred U/S 482 of Cr.P.C and pass

**I.A. NO: 1 OF 2020**

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 pleased to stay of arrest of the petitioner/Accused no 2 in Crime No. 72 of 2020 of Chilakaluripet Town P.S, U/S 188, r/w 34 IPC, Sec 34(A) of AP Excise ACT and Section 19 (A), 211, 212, of Ordinance no 2/2020 of APPR Amendment ACT 1994, until disposal of the quash petition and pass

**I.A. NO: 2 OF 2020**

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

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri SRINIVASA RAO NARRA, Advocate for the Petitioner and the Public Prosecutor (TG/AP) on behalf of the Respondent No. and of Sri\_Advocate for the Respondent No.

**The Court made the following:**

**ORDER:**

The instant petition under Section 482 of the Code of Criminal Procedure, 1973<sup>1</sup> has been filed by the Petitioners/Accused Nos.1 and 2, seeking quashment of the proceedings against them in Crime No.72 of 2020 on the file of Chilakaluripet Town Police Station, Guntur District, registered for the offences under Section 188 r/w 34 of the Indian Penal Code<sup>2</sup> and Section 34(a) of A.P. Excise Act and Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P.Panchayat Raj Amendment Act, 1994.

**2. Brief facts of the case are as follows:**

a. On 12/13.03.2020 at about 1.30 a.m., while the Sub-Inspector of Police along with his staff was on night rounds to prevent any untoward incidents with regard to ensuing Municipal Elections, and while they were checking the vehicles, at Patha Santha, Narasaraopet Road, Chilakaluripet Town, they found a car bearing No. AP 39 AB 2444 and Accused No.1 sitting in the said vehicle. On

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<sup>1</sup> in short 'Cr.P.C'

<sup>2</sup> in short 'IPC'

seeing the Police, Accused No.1 perturbed and tried to flee away. Police caught hold him and on questioning, he disclosed his identity particulars and confessed that he is a resident of Endugumpalem Village, Nadendla Mandal; that he and his father were working as Sub-Contractors in Panchayat Raj Department of Chilakaluripet; that he was a party worker of Telugu Desam Party. He stated that Accused No.2 asked him to distribute the same to the voters in view of the Municipal Elections. He also opened the dickey of the car and showed them 83 bottles of 180 ml Green Choice Whisky each.

**b.** When Accused No.1 was asked as to whether he had permission or licence to keep the bottles with him, he replied that he was not having such things. Then, the S.I of Police seized the liquor bottles and the car bearing No.AP 39 AB 2444 in which the said bottles were kept, from the possession of Accused No.1, arrested Accused Nos.1 and 2 for violation of Election Code and registered the present crime.

### **Grounds Sought for Quashment**

**3.** Being aggrieved by the registration of said crime against them, Petitioners/Accused Nos.1 and 2 filed the present petition on the following grounds:

**a.** The present complaint is not maintainable either in law or on facts as *prima facie* ingredients are not made out against the accused.

**b.** The Police with the pressure of local MLA and her husband, preferred to give a false report against the accused attributing false allegations without any iota of material against the accused.

c. The Petitioners had never been in possession of the alleged liquor and Petitioner No.2 never cooperated to Petitioner No.1 either to possess the liquor or to distribute the same to anybody

d. The alleged confession of Accused No.1 before the Police is not valid in the eye of law and the confession itself is false. Basing on the inadmissible confession, Petitioner No.2 was falsely implicated in the case.

e. Petitioner No.2 filed a nomination for ZPTC, Nadendla Mandal and though MLA and her husband warned him to withdraw the nomination and as Petitioner No.2 has not withdrawn the nomination, this false case was foisted against the petitioner.

#### **Arguments Advanced at the Bar**

4. Heard Sri Narra Srinivasa Rao, learned counsel for the Petitioners and Ms.D.Prasanna Lakshmi learned Assistant Public Prosecutor for State/Respondent Nos.1 and 2.

5. Learned counsel for the Petitioners/Accused Nos.1 and 2 in elaboration to what was stated in the Petition, would submit that the present complaint was lodged based on the police proceedings, which is not tenable under law. He would further submit that Accused No.2 and the father of Accused No.1 were contesting members in ZPTC elections and to eliminate them from the contest, the present case was foisted against the Petitioners. It is also stated that the case against Accused No.2 was registered only based on the confession of Accused No.1, which is not valid in the eye of law. He would thus contend that the continuation of proceedings against the Petitioners is an abuse of process of law.

6. Refuting the arguments referred to above, learned Assistant Public Prosecutor would submit that there are no grounds to quash the case against petitioner. She would submit that the allegations made against the Petitioners would squarely attract the offence alleged against them and therefore, the criminal proceedings should not be quashed against Petitioners. Hence, prayed to dismiss the petition.

#### **Point for Determination**

7. Having heard the submissions of the learned counsels, now the point that would emerge for determination is:

*Whether there are any justifiable grounds for quashment of proceedings against the Petitioners/ Accused Nos.1 and 2 in Crime No.72 of 2020 on the file of Chilakaluripet Town Police Station, Guntur District, registered for the offences under Section 188 read with 34 IPC, Section 34(a) of A.P.Excise Act and Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P.Panchayat Raj Amendment Act, 1994?*

#### **Determination by the Court**

8. A perusal of Section 482 Cr.P.C. makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice. A court while sitting in Section 482 jurisdiction is not functioning as a court of appeal or a court of revision. It must exercise its powers to do real and substantial justice, depending on the facts and circumstances of the case. These powers must be invoked for compelling reasons of abuse of process of law or glaring injustice, which are against sound principles of criminal jurisprudence.

9. Perusal of the record would disclose that the offences alleged against the Petitioners are under Section 188 read with 34 IPC and Section 34(a) of A.P.Excise Act and Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P.Panchayat Raj Amendment Act, 1994.

10. At this juncture for better appreciation, it is relevant to extract Section 188 IPC which reads as under:

**“Section 188. Disobedience to order duly promulgated by public servant.—** *Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

*Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”*

11. As far as the offence under Section 188 IPC is concerned, it is relevant to refer to the decision rendered by this Court in **Gade Venkateswara Rao v. State of A.P.**<sup>3</sup>, wherein, it was held as follows;

**“13.** *In catena of decisions, a coordinate bench of this Court in CrI.P. No. 4633 of 2023, CrI.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*

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<sup>3</sup> 2023 SCC OnLine AP 4021

*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 1951(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.”*

**12.** Since the present case was registered based on the police proceedings, in view of the above decision, continuation of the impugned proceedings against the Petitioners for the offence under Section 188 IPC, is nothing but an abuse of process of Court.

**13.** Regarding the offence under Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P. Panchayat Raj Amendment Act, 1994, for better understanding, said sections are extracted hereunder:

**“19.A Disqualification on ground of corrupt practice or election offences:-** Any person who is convicted of any offence punishable under Chapter IX A of the Indian Penal Code, 1860, and any person against whom a finding of having indulged in any corrupt practice is recorded in the verdict in an election petition filed in accordance with section 233, or any person convicted of an offence punishable under Chapter II of Part V of this Act, for a period of six years from the date of such conviction or verdict, as the case may be.”

**211. Corrupt practices:-** The following shall be deemed to be corrupt practices for the purposes of this Act:-

(1) Bribery, that is to say,-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any gratification, to any person whomsoever, with the object, directly or indirectly, of inducing –

(a) a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

.....

**212. Punishment for corrupt practice:-** If any person is guilty of any such corrupt practices as specified in section 211 or in connection with an election he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to three thousand rupees.”

14. Coming to the offence under Section 34(a) of A.P.Excise Act, it is apposite to extract said section which reads thus:

**“34. Penalties for illegal import etc. -** Whoever, in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act,-

(a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant;

15. The allegation against the Petitioners was that Accused No.1 was in possession of intoxicants i.e., 83 bottles of 180 ml Green Choice Whisky each, which exceed the permissible limit. The contention of the Petitioners is that Police with the pressure of local MLA and her husband preferred to give a false report against the Petitioners attributing false allegations without any iota of material. It is further contended that the Petitioners never had been in possession of the alleged liquor. But considering the fact that a large quantity i.e., 83 bottles of 180 ml Green Choice Whisky each were seized as per the FIR, which were more than permissible limit and the Petitioners have to prove their innocence, with necessary evidence before the Court. As there is no bar under Excise Act to register a complaint on the police proceedings, the proceedings against the

Petitioners under Section 34(a) of A.P. Excise Act cannot be quashed at the inception.

16. Therefore, in view of the foregoing discussion, this Court considered that it is a fit case to quash the proceedings against the Petitioners for the offences under Section 188 IPC only, and to dismiss the quash petition for the offence under Section 34(a) of A.P.Excise Act and Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P.Panchayat Raj Amendment Act, 1994.

17. In the result, the Criminal Petition is partly allowed quashing the proceedings in Crime No.72 of 2020 on the file of Chilakaluripet Town Police Station, Guntur District for the offence under Section 188 IPC and the criminal petition is dismissed for the offence under Section 34(a) of A.P. Excise Act and Sections 19-A, 211 and 212 of Ordinance No.2/2020 of A.P. Panchayat Raj Amendment Act, 1994

Pending applications, if any, shall stand closed.

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date: 01.02.2024

*Note: L.R.Copy to be marked*

*Dinesh*

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

**Cri.P.No.1888 of 2020**

**Dt.01.02.02024**

*Note: L.R.Copy to be marked*

*Dinesh*

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

**CRIMINAL PETITION No.1888 of 2020**

**Between:**

1. GATTINENI VIJAYA SAI, Father Name Ramesh Aged about 25yrs R/o. Enugupalem Village, Nadendla Mandal, Guntur Dt. Andhra Pradesh
2. Bandarupalli Satyanarayana, S/o. Jaganadam, aged about 48yrs, R/o Sathuluru Village, Nadendla Mandal, Guntur Dt. Andhra Pradesh

**...PETITIONER/ACCUSED(S)**

**AND**

1. THE STATE OF AP, Rep by its Public Prosecutor High court of Andhra Pradesh at Amaravathi, Guntur District.
2. THE SHO, Chilakaluripeta Town PS, Guntur Dt, Andhra Pradesh.

**...RESPONDENT/COMPLAINANTS**

DATE OF JUDGMENT PRONOUNCED: **01.02.2024**

**SUBMITTED FOR APPROVAL:**

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

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|----|---------------------------------------------------------------------------|--------|
| 1. | Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters / Journals? | Yes/No |
| 3. | Whether Her Lordship wish to see the fair copy of the Judgment?           | Yes/No |

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JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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

**+ CRIMINAL PETITION No.1888 of 2020**

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2. THE SHO, Chilakaluripeta Town PS, Guntur Dt, Andhra Pradesh.

**...RESPONDENT/COMPLAINANTS**

*! Counsel for Petitioners* : Sri Narra Srinivasa Rao

*^ Counsel for Respondents* : Assistant Public Prosecutor for R.1

*< Gist:*

*> Head Note:*

*? Cases referred:*

1. 2023 SCC OnLine AP 4021

*This Court made the following:*