

(2024) 02 KAR CK 0048

In the Karnataka High Court

Case No : Criminal Petition No. 289 Of 2024 (482)

B Sriramulu

APPELLANT

Vs

State Of Karnataka, Represented By M Thippeswamy,
Assistant Director, Akshara Dasoha Scheme, Taluk
Panchayath, Challakere 577522. R/By State Public
Prosecutor, High Court Building, Complex, Bangalore 560061

RESPONDENT

Date of Decision : 23-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 188

Citation : (2024) 02 KAR CK 0048

Hon'ble Judges : Krishna S Dixit, J

Bench : Single Bench

Advocate : Geetha N. Nettar, Chandrashekar R P, B Jagadeesh

Final Decision : Dismissed

Judgement

Krishna S Dixit, J

1. Petitioner, a former minister in the State Government is invoking inherent jurisdiction of this Court under Section 482 of CR.P.C. 1973 for the quashment of criminal proceedings in CC No.481/2023 pending on the file of learned III Additional Civil Judge and JMFC, Chitradurga, for the offence p/u/S 188 of Indian Penal Code, 1860.

2. Learned counsel for the Petitioner vehemently argues that even taking the complaint at face value, there is no commission of offence at all in terms of Section 188 of IPC, and therefore, the subject criminal proceedings are liable to be quashed in terms of Apex Court decision in STATE OF HARYANA VS. C H BHAJAN LAL, AIR 1992 SC 604. In support of his contention as to what all is required as ingredients to constitute the offence, he presses into service a decision of Calcutta High Court in HABIBUR RAHAMAN KHAN VS. STATE & OTHERS, 1982 ONLINE CAL 51.

3. Learned Addl. SPP appearing for the State vociferously resists the Petition making submission in justification of trial Court's order taking cognizance of the offence and issuance of process to the accused for the offence in question. He also banks upon a decision of the Apex Court in *STATE OF MAHARASHTRA VS. SAYYED HASSAN SAYYED SUBHAN* (2019) 8 SCC 145. From the records he points out that despite issuance of summons on multiple occasions, Petitioner has not appeared before the learned Magistrate pleading that the summons has not been served. So contending, he seeks dismissal of the Petition.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court declines indulgence in the matter broadly agreeing with the submission of learned Addl. SPP. Firstly, the Petitioner has not appeared before the learned Magistrate though the summons was issued on 05.05.2023, 06.06.2023, 17.07.2023 and lastly on 04.09.2023. Petitioner happens to be a former minister. The contention that summons was not served only leads to the presumption that he is avoiding to be served with the summons. He cannot plead ignorance of the proceedings of the Court below inasmuch as, in this petition he seeks their quashment. It hardly needs to be reiterated that howsoever high one may be, law is above him. In exercising inherent jurisdiction, the conduct of its invoker cannot be ignored.

5. The vehement submission of learned counsel for the Petitioner that the complaint does not disclose all ingredients of Section 188, is difficult to countenance. Apparently, the complaint is filed by a public servant who was acting on the instructions of Election Commission of India and the District Election Officer during the General Elections to the State Assembly that were held in April - May, 2023. The allegation in the complaint is about the violation of an order promulgated by a public servant who was lawfully empowered. The order made by the District Election Officer or an Officer on deputation to Election Commission of India answers this description. The application dated 28.04.2023 seeking permission for conducting the public rally at Challakere was turned down vide Endorsement dated 28.04.2023. That itself constitutes an order promulgated by a public servant. If that order is violated, the essential ingredient of Section 188 is complied with. Whether the second part of the provision namely such disobedience causing or tending to cause obstruction, annoyance, injury or risk, need not be in so many words stated to have been present. A bare reading of the complaint dated 29.04.2023 makes the same apparent. Therefore, the decision in *HABIBUR RAHAMAN* supra could not come to the aid of Petitioner. On the contrary, the Apex Court decision in *SAYYED HASAN* supra comes to the rescue of the Respondent in view of the observation of Apex Court at paragraph no.6 which reads as under:

... Section 188 IPC does not only cover breach of law and order, the disobedience of which is punishable. Section 188 is attracted even in cases where the act complained of causes or tends to cause danger to human life, health or safety as well...

6. Learned Addl. SPP is right in contending that the complaint of the kind should not be examined with a microscope. Ordinarily, FIR or complaint or private complaint are skeletal in content. A reading of them if gives the rough picture that would broadly fit into precincts of the charging and penal provision, the requirement at the stage of taking cognizance is satisfied. An argument to the contrary would defeat the very object for which such provisions are enacted. Thus, no case of abuse of process of court is made out.

In the above circumstances, this Petition being devoid of merits is liable to be dismissed and accordingly it is.

The Petitioner is hereby directed to appear before the learned Magistrate on the next date of hearing, which he should ascertain from the Court below itself on a war footing. Such appearance if not made, the same shall be viewed very seriously and appropriate action may be taken on an application being moved by the State in this regard.