

(2021) 08 TEL CK 0011
In the Telangana High Court
Case No : Criminal Petition No. 6537 Of 2020

Syed Taha Arsalan And 4 Others Vs State Of Telangana And Another

Date of Decision : 04-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 188, 195, 195(1)(a), 482
Indian Penal Code, 1860 — Section 188, 269, 270, 283
Epidemic Diseases Act, 1897 — Section 2, 3
Disaster Management Act, 2005 — Section 51, 51(b), 52, 53, 54, 55, 56, 57, 58, 59, 60
Police Act, 1861 — Section 30

Citation : (2021) 08 TEL CK 0011

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Md Fasiuddin

Final Decision : Disposed Of

Judgement

1. The present Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973, to quash the proceedings in C.C. No.1641 of

2020 on the file of Judicial Magistrate of First Class (Special Mobile PCR) at Karimnagar against the petitioners herein.

2. The petitioners herein are accused Nos.1 to 5 in the said Calendar Case. The offences alleged against them are under Sections - 188, 269 and 270

of IPC, Section - 3 of the Epidemic Diseases Act, 1897 (for short "E.D. Act") and Section - 51 (b) of the Disaster Management Act, 2005 (for

short D.M. Act) respectively.

3. Heard Mr. Mohd. Fasiuddin, learned counsel for the petitioner and learned Assistant Public Prosecutor appearing on behalf of respondents.

4. CASE OF PROSECUTION:

LW.1, Sub-Inspector of Police, Karimnagar II Town Police Station, while

performing patrolling duty on 15.04.2020 from 0800 hours to 1400 hours, he found gathering of 60 to 70 people near Madeena Kiran Shop at Kashmeergadda, where, accused Nos.1 to 5 stationed their TATA Indigo Manza Car bearing registration No.AP 31BG 7220 and Maruthi Alto Car bearing registration No.AP 01 AD 6987 on the road and were distributing dry ratio bags to the said people without following the State and Central Government Orders of COVID-19 and without obtaining prior permission from District Authority. Even they have not followed the social distance of three feet from each other, due to which, the innocent people gathered at one place also did not maintain social distance. On account of such acts of accused, there was every chance of spreading Corona Virus to the society in Karimnagar Town causing endanger to human lives. Thus, the accused have committed the aforesaid offences.

5. CONTENTIONS OF PETITIONERS:

i) Mr. Mohd. Fasiuddin, learned counsel for the petitioners, would submit that the petitioners were forcibly got bound over and registered a false case against them. He would further submit that the petitioners in good faith distributed ration kits to the deserving people in the morning hours during lockdown on account of COVID-19 in good faith and by taking precautionary measures, such as wearing masks and maintaining physical distance of three feet etc. Thus, they did not commit any offence, much less the aforesaid alleged offences. In support of the same, he has relied upon

G.O.Ms.No.13 of Health and Family Welfare (D) Department, Government of Telangana, dated 21.03.2020 and G.O.Ms.No.116 of General Administration Department, dated 30.05.2021.

ii) Learned counsel for the petitioners would further submit that there are no specific allegations attracting the aforesaid offences. The police did not examine any independent witness to the effect that the petitioners did not wear masks and did not follow the physical distance etc. and, thus, the investigation conducted by the police is improper. The charge sheet lacks the ingredients of the aforesaid offences.

iii) With the aforesaid submissions, learned counsel sought to quash the proceedings against the petitioners.

6. CONTENTIONS ON BEHALF OF PROSECUTION:

i) Learned Assistant Public Prosecutor would submit that there are specific

allegations against the petitioners herein. There are triable issues to be decided by the trial Court only after full-fledged trial, but not at this stage. The petitioners have to prove their innocence. The police after conducting the investigation filed the charge sheet. The defence taken by the petitioners may not be considered in the present petition filed under Section - 482 of Cr.P.C.

ii) With the aforesaid submissions, learned Assistant Public Prosecutor sought to dismiss the present petition.

7. FINDING OF THE COURT:

i) The main allegation against the petitioners herein by the complainant, Sub-Inspector of Police, is that during lock down imposed by the State as well as Central Government, the petitioners distributed the ration kits to the poor people without wearing masks and without maintaining physical distance of three feet, and thereby there was every chance of spreading Corona Virus to the society in Karimnagar Town which endangers to human life. On the other hand, it is contended by the accused that they have distributed the ration kits to the deserving people during lock down period by wearing masks and following the physical distance of three feet etc. In support of their contention, they have filed copies of photographs, paper clippings and articles published in different News Papers etc. A perusal of the same would show that the people found therein wore the masks while distributing the ration kits.

ii) It is relevant to note that the police have not examined any independent witness to support of their case. LW.1 is none other than the complainant and Sub-Inspector of Police. LW.2 and LW.3 are police constables said to be eye witnesses to the facts of the case. LW.4 and LW.5 are panch witnesses in whose presence the police drew rough sketch. It is relevant to note that in the charge sheet it has been specifically mentioned that there is no incriminating material found. LW.6 is the first Investigating Officer, who issued the FIR, while LW.7 is the second Investigating Officer, who filed charge sheet. Thus, it is clear that there is no independent witness examined by the police to speak about the acts committed by the accused attracting the aforesaid offences.

iii) In view of the above rival submissions, it is apposite to extract the relevant provisions of IPC, ED Act and DM Act, which are as under:

INDIAN PENAL CODE

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 person 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 trends 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.

Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not

pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and

which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of

either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever maliciously does any act which is, and which he

knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine, or with both.

EPIDEMIC DISEASES ACT

3. Penalty.â?"(1) Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable

under section 188 of the Indian Penal Code (45 of 1860).

(2) Whoever,â?

(i) commits or abets the commission of an act of violence against a healthcare service personnel; or

(ii) abets or cause damage or loss to any property, shall be punished with imprisonment for a term which shall not be less than three months, but which

may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.

(3) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian

Penal Code (45 of 1860) to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend

to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.â??

DISASTER MANAGEMENT ACT

â??51. Punishment for obstruction, etc.â?" Whoever, without reasonable causeâ?

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State

Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive

Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or

refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term

which may extend to two years.â??

iv) In view of the above, the legislative intent behind Section - 195 Cr.P.C. is that an individual should not face criminal prosecution instituted upon

insufficient grounds by person actuated by malice or frivolity of deposition and to save the time of the court being wasted by endless prosecution. In

the absence of complaint by the public servant concerned under Section - 195 Cr.P.C., the offence under Section - 188 of IPC against accused cannot be sustained.

v) In order to convict any person for commission of offence punishable under Section - 188 IPC, the Court has to satisfy itself that the accused had not only violated the order promulgated by a public servant but also the accused had actual knowledge of issuance of such order. In the case on hand, there is no whisper in the charge sheet that the accused had knowledge of the order.

vi) In *Bhoop Singh Tyagi v. State* 2002 Cri.L.J. 2872, the Delhi High Court held that a person booked under Section - 188 of IPC must have actual knowledge of public servant's order requiring him to do or abstain from doing some act. It was further held that acquiring or gaining of such knowledge is a pre-requisite and any proof of general notification promulgated by a public servant would not satisfy the requirement.

vii) In *N.T. Rama Rao v. The State of A.P.*, rep. by Public Prosecutor Criminal Petition No.5323 of 2009, decided on 17.09.2009 while dealing with the offences under Sections - 188 and 283 of IPC, the learned Single Judge held as under:

“5) Even if the allegation that the petitioner conducted public meetings at three road junctions contrary to the permission accorded for conducting of a public meeting only at one specified place is true, such a direction under Section 30 of the Police Act, 1861 could have been given only by the Superintendent or the Assistant Superintendent of Police of the District but not by any of their subordinates. If such a permission is granted under Section 30 of the Police Act, 1861 and is violated, Section 195 (1) (a) of Code of Criminal Procedure mandates that the complaint in this regard has to be made by the public servant concerned or some other person to whom such a public servant is administratively subordinate to enable any Court to take cognizance of an offence under Section 188 of Code of Criminal Procedure. In the present case, the charge sheet was filed by the Sub Inspector of Police, who could not have been the authority to grant permission for the public meeting and therefore, the complaint/charge sheet is in violation of the mandatory provision of Section 195(1)(a) of Code of Criminal Procedure.

6) That apart, the offence alleged to have been committed under Section 283 of

the Indian Penal Code by the petitioners and others is obviously in consequence to the alleged offence under Section 188 of Indian Penal Code and is not an independent of the same. Even otherwise, the conduct of public meeting at three road junctions or obstruction to the traffic could not have been considered as causing any danger or injury to any person. In so far as the obstruction in any public way is concerned, which can also be covered by Section 283 of the Indian Penal Code, the charge sheet cites only one witness to speak about the traffic jam caused by the road show. But, when the conduct of the public meeting at least at one place has been permitted and if the gathering for that public meeting resulted in any inconvenience by way of obstructing the traffic, the same cannot be considered to be with necessary guilty mens rea to construe the existence of an offence punishable under Indian Penal Code. Under the circumstances, none of the offences alleged can be said to have any reasonable basis and in any view, the complaint/charge sheet being in violation of Section 195 (1) (a) of Code of Criminal Procedure, has to fail.

7) As the complaint has failed due to its unsustainability, the proceedings in their entirety have to fail, though the 1st accused alone approached this Court by way of this Criminal Petition.â??

viii) In Thota Chandra Sekhar v. The State of Andhra Pradesh, through S.H.O., P.S. Eluru Rural, West Godavari District Criminal Petition No.15248 of 2016, decided on 26.10.2016 relying on various judgments including N.T. Rama Rao Criminal Petition No.5323 of 2009, decided on 17.09.2009 and the guidelines laid down by the Honâ??ble Supreme Court in State of Haryana v. Bhajan Lal (1992) Supp. 1 SCC 335, more particularly, guideline No.6, which says that where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious remedy to redress the grievance of the party, a learned Single Judge of High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh quashed the proceedings in the said C.C. by exercising power under Section 482 of Cr.P.C. It further held that the proceedings shall not be continued due to technical defect of obtaining prior permission under Section - 155 (2) of Cr.P.C. and taking

cognizance on the complaint filed by V.R.O. and it is against the purport of Section 195 (1) (a) of Cr.P.C.

ix) In the case on hand, the police did not mention in the charge sheet that the petitioners herein had knowledge of the order promulgated by the public

servant. Further, as already discussed above, the police has not even examined any independent witness to show that the petitioners did not wear any

mask and that they did not maintain physical distance of three feet etc., and that on account of their acts, the innocent people gathered at one place

causing chance of spreading Corona Virus to the society in Karimnagar.

x) On the other hand, the petitioners filed copies of photographs, paper clippings and Articles published in various news papers / magazines etc.,

showing that they were distributing the ration kits to the deserving people in good faith during lock down by wearing masks etc. In support of his

contention, learned counsel for the petitioner would submit that the act of petitioners in distributing the ration kits to the deserving people during lock

down period would not amount to an offence as alleged by the prosecution against them in view of Clause -17 of G.O.Ms.No.13 of Health and Family

Welfare (D) Department, Government of Telangana, dated 21.03.2020 and instruction Nos.11 and 12 of G.O.Ms.No.116 of General Administration

Department, dated 30.05.2021.

xi) A perusal of the said G.O.Ms. No.13 would reveal that it was issued by the Government of Telangana in exercise of the powers conferred under

Section - 2 of the E.D. Act, framing certain regulations called as "The Telangana Epidemic Diseases (COVID-19) Regulations, 2020". Clauses

- 16 and 17 of the regulation in the said G.O. are relevant, which are as under:

16. Any person, institution, organization violating any provision of these Regulations shall be deemed to have committed an offence punishable

under section 188 of Indian Penal Code (45 of 1860). The empowered officers may penalize any person, institution, organization found violating

provisions of these Regulations or any further orders issued by Government under these Regulations.

17. No suit or legal proceedings shall lie against any person for anything done or intended to be done in good faith under these Regulations.

xii) In continuation of the said G.O.Ms.No.13, the State Government has also issued G.O.Ms.No.14, dated 23.03.2020, framing some more regulations

to ensure social distancing to restrict the spread of COVID-19, to be followed by all Shops, establishments etc. In the said G.O., it is also mentioned

that violation of the social distancing norms shall be punishable under Sections - 188, 269 and 270 of IPC.

xiii) A perusal of the G.O.Ms.No.116, dated 30.05.2021 would reveal that it was issued in exercise of powers conferred under the Disaster

Management Act, 2005, on account of pandemic situation, the Government has extended the lockdown with certain modifications across the State of

Telangana from 31.05.2021 to 09.06.2021 by issuing directives to the concerned to implement the instructions therein strictly. Even in the said G.O.,

instruction Nos.11 and 12 under the caption "General Instructions" is relevant to extract, which are as under:

"11. Any violation of the aforesaid instructions shall result in prosecution under Sections 51 to 60 of Disaster Management Act, 2005 and Section

188 of IPC as well as other applicable laws.

12. No suit or legal proceedings shall lie against any person for anything done or intended to be done in good faith under these regulations."

xiv) In view of the above, the contention of the petitioners that they have distributed the ration kits to the deserving people in "good faith" and,

thus, their act would not amount to have committed any offence under Sections - 188, 269 and 270 of IPC and so also under Section - 3 of E.D. Act

and Section - 51 of D.M. Act, is sustainable.

xv) More over, Section - 3 of the E.D. Act envisages that any person disobeying any regulation or order made under this Act shall be deemed to have

committed an offence punishable under section 188 of IPC. This Court has already held that the petitioners have not committed any offence, much

less the offences under Section - 188 of IPC. Section - 52 of the D.M. Act prescribes punishment for making a false claim for obtaining any relief,

assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the authorities mentioned therein. In the present case,

there is no allegation whatsoever against the petitioners of having made any false claim, let alone for obtaining any relief, assistance, repair,

reconstruction or other benefits consequent to disaster from any officer of the Government or other authority. In view of the aforesaid, the allegation

in respect of the offence punishable under Section - 52 of the D.M. Act cannot be

sustained against the accused. The facts of the present case fall within the parameters laid down by the Apex Court in Bhajan Lal⁴. Therefore, continuation of proceedings in C.C. No.1641 of 2020 is not warranted and the same are liable to be quashed.

8. CONCLUSION:

i) Applying the principle laid down in the above said judgments and in view of the above said discussion, the proceedings in C.C. No.1641 of 2020 on

the file of Judicial Magistrate of First Class (Spl.Mobile PCR), Karimnagar, are hereby quashed against the petitioners herein.

ii) The present Criminal Petition is accordingly allowed.

iii) Since the proceedings are quashed against the petitioners, the petitioners are at liberty to file appropriate application afresh before the Magistrate

for return of the vehicles seized by the police, and the Magistrate shall consider the same in accordance with law.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.