

THE HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION No.4143 OF 2022

ORDER:

This Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in Cr.No.107 of 2018 registered for the offence under Section 171-E of IPC by the Police, Sadashivnagar Police Station, Kamareddy District. The petitioner is sole accused in the said crime.

2. Heard Sri N.Manohar, learned counsel for the petitioner and Sri T.V.Ramana Rao, learned Addl. Public Prosecutor appearing for 1st respondent-State.

3. As per the complaint, dated 03.10.2018 lodged by 2nd respondent, the allegations leveled against the petitioner herein are that a video clip was telecasted in ETV Telangana and Raj News channels relating to the petitioner herein-MLA in the dissolved Assembly and he was the candidate from Yella Reddy Assembly Constituency in the ensuing Assembly Elections announced by the TRS party. In the said video clipping, it was reported, that the petitioner is inducing women SHG groups in Markal Village of Sadashivanagar Mandal, Kamareddy District on 27.09.2018 and he

told women around him to pass a resolution to vote to TRS cent percent and they will give the women Rs.5,00,000/-.

4. 2nd respondent further stated that a report has been called from DEO, Kamareddy, in which he has concluded that the candidate i.e. the petitioner herein assured the women groups that the amount will be given for construction of women SHG building in Markal Village, after formation of their Government. He has also further stated that bribery at elections is an electoral offence under Section 171-B of IPC and a person who offers or agrees to give or offers or attempts to procure, a gratification shall be deemed to give a gratification, and requested to initiate necessary penal action under relevant provisions of IPC against the candidate.

5. The RDO and Returning Officer, Yellareddy Assembly Constituency has also directed to take action as desired by the Chief Election Commission of India, Telangana State dated 03.10.2018. Therefore, the petitioner being Ex-MLA and candidate announced by the TRS party as MLA from Yellareddy Assembly Constituency has committed electoral offence and he is liable for punishment under Section 171 (E) of IPC.

6. Attacking the said First Information Report, Sri N.Manohar, learned counsel for the petitioner would submit that the Election Commission of India has announced Schedule for General Elections to the State Legislative Assemblies including Telangana State, through Press Note No.ECI/PN?66/2018, dated 06.10.2018, wherein it is mentioned that the date of final publication of Electoral Rolls is 12.10.2018. Whereas, complaint was lodged on 03.10.2018 itself by the 2nd respondent. As on the said date, there were no elections and the petitioner was not even MLA and therefore, the question of committing electoral offence by the petitioner does not arise. Therefore, the contents of the complaint dated 03.10.2018 lacks ingredients of Section 171(E) of IPC. With the said submissions, he sought to quash the proceedings in Cr.No.107 of 2018.

7. Whereas, Sri T.V.Ramana Rao, learned Additional Public Prosecutor, referring to the said complaint dated 03.10.2018, would submit that the petitioner herein was the candidate announced by TRS party in respect of Yellareddy Assembly Constituency. Therefore, for all practical purposes, he is a contesting candidate in respect of Yellareddy Assembly Constituency. He has requested the women SHG groups in Markal Village of Sadashivanagar Mandal, in

Kamareddy District, to pass a resolution to vote to TRS cent percent and he will give them Rs.5,00,000/- after formation of their Government. Therefore, it amounts to bribery and the offence as per Section 171-B of IPC. The contents of the complaint dated 03.10.2018 constitute offence under Section 171-E of IPC. FIR cannot be quashed at the threshold. There are several factual aspects which the Investigating Officer has to consider during the course of investigation. With the said submissions, he sought to dismiss the present criminal petition.

8. In the light of the aforesaid submissions, it is relevant to note that Section 171-B of IPC deals with bribery and the same is extracted below:-

171B. Bribery.—

(1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery: Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

9. Section 171-E of IPC deals with punishment for bribery and

it says:-

171E. Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

Therefore, to attract offence under Section 171-B of IPC, there should be 1) Giving gratification to any person with the object of inducing that person to exercise any electoral right or of rewarding that person for having exercised any such right, 2) accepting gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, It also says that declaration of public policy or a promise of public action shall not be an offence under this section.

10. As discussed supra, in the complaint, dated 03.10.2018 of 2nd respondent it is alleged that the petitioner requested women of SHG groups in Markal Village of Sadashiva Nagar Mandal,

Kamareddy District, to pass a resolution that they will vote to TRS cent percent, for which he will give Rs.5,00,000/-.

11. It is relevant to note that the said women are self-help group women. As on 27.09.2018, there is no notification issued by the Election Commission of India declaring Election Schedule in Telangana State including Yella Reddy Assembly Constituency of Kama Reddy District. Admittedly, the Election Schedule was issued on 06.10.2018 and date of final publication of Electoral Rolls was on 12.10.2018. Thus, as on the date of the alleged video clipping, the election process was not set on motion. Without considering the said aspects, 2nd respondent lodged a complaint with the Station House Officer, Sadasivnagar Police Station, who in turn, registered a case in Cr.No.107 of 2018. Thus, *prima facie*, the contents of the complaint dated 03.10.2018 lacks the ingredients of offence under Section 171-E of IPC. There is no dispute that the complaint cannot be quashed at the threshold and the Investigating Officer has to conduct investigation with regard to several factual aspects mentioned in the complaint. But, at the same time, a plain reading of the complaint would reveal that the contents of the complaint dated 03.10.2018 lacks the ingredients of the offence alleged against the petitioner herein.

12. The Hon'ble Supreme Court in **Neeharika Infrastructure Private Limited v. State of Maharashtra**¹ held that if the contents of the complaint, *prima facie*, lack the ingredients of a particular offence, proceedings in the crime cannot go on. Therefore, investigation cannot go on in Cr.No.107 of 2018 pending on the file of the Station House Officer, Sadashivanagar, Kamareddy District and the same are liable to be quashed.

13. In the light of the above discussion, the Criminal Petition is allowed. The proceedings in Cr.No.107 of 2018 pending on the file of the Station House Officer, Sadashivnagar Police Station, Kamareddy District, against the petitioner herein/accused are quashed.

Miscellaneous petitions, if any, pending in the criminal petition, shall stand closed.

JUSTICE K. LAKSHMAN

Date: 11.08.2023

Vvr/Mgr

¹. AIR 2021 SC 1918