

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.2543 OF 2021

Between:

M.Srikanth and another ... Petitioners

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.03.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CrI.P.No.2543 of 2021

% Dated 14.02.2023

M.Srikanth and another

... Petitioners

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another

... Respondents

! Counsel for the Petitioners: Sri Manu

^ Counsel for the Respondents:

1) Sri S.Sudershan
Additional Public Prosecutor for R1

2) Sri M.S.Chandresh, for R2

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.2543 OF 2021****ORDER:**

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.,C. '), is filed by the petitioners/A1 & A2 to quash the proceedings in C.C.No.988/2021 on the file of the XXII Additional Chief Metropolitan Magistrate, Secunderabad. The offences alleged against the petitioners/A1 & A2 are under Sections 148 r/w.149, 427 of the Indian Penal Code and Section 3 of the Prevention of Damage to Public Property Act, 1984.

2. Heard the learned counsel for the petitioners and learned Assistant Public Prosecutor for the respondent-State.

3. A complaint was filed by the 2nd respondent who is the Tahasildar of Marredpally division, stating that public toilets were demolished in the land, which is subject matter of WP.No.9707/2020 filed by the members of Hari Nam Prachar Samithi. The society was claiming it to be their property. The Tahasildar filed counter in the WP, however, this Court in IA.No.1/2020 in WP.No.9707/2020 restrained the Revenue as well as Police authorities from interfering with the said property. It is alleged that taking advantage of the orders passed by this court, the

members of the Hari Nam Prachar Samithi formed into unlawful assembly and armed with construction implements, demolished the public toilets as well as premises of Skill Development Centre on 09.02.2021 and thereby violated the orders of the High Court and caused loss to the public property which are public toilets erected in three tin sheds. An Idol of Lord Krishna was installed contrary to the orders issued by the Apex Court in SLP No.8519 of 2006 dated 29.09.2009, 16.02.2010 and 08.03.2016. Since the acts of these petitioners who are members of Hari Nam Prachar Samithi amounts to violation of High Court order and causing destruction of public property, the present complaint was filed. The Police having investigated the case filed charge sheet against the petitioners. The Police identified these two petitioners who are Office Bearers of Hari Nam Prachar Samithi as the persons responsible and accordingly charge sheeted these petitioners.

4. Learned Counsel appearing for the petitioners would submit that 'Hari Nam Prachar Samithi' represented by Accused No.2 herein filed Writ Petition No.9707/2020 and this Court directed that the Police or the Revenue authorities shall not interfere with the peaceful possession and enjoyment of the Hari Nam Prachar Samithi over the land in Survey No.74/10, admeasuring Ac.1.23 guntas at East Marredpally, Secunderabad, pending further orders.

In the said circumstances, the question of Hari Nam Prachar Samithi trespassing into its own land or causing any destruction would not arise. For the said reason, the proceedings have to be quashed.

5. On the other hand, it was argued on behalf of respondents that these petitioners along with others formed into unlawful assembly and caused destruction of public toilets erected in the subject land, contrary to the orders of this Court in WP.No.9707/2020. Further the acts of these petitioners are in violation of the said orders and accordingly prayed to dismiss the criminal petition.

6. Admittedly, when this Court in W.P.No.9707 of 2020 filed by the 'Hari Nam Prachar Samithi' found that the land in question was a private patta land and the possession of the Hari Nam Prachar Samithi cannot be interfered with by the Revenue authorities or the Police (respondents 1 to 8 in the said writ petition), the question of the petitioners who are members of the Hari Nam Prachar Samithi, trespassing into their own land does not arise.

7. As claimed by the Tahasildar/complainant in his complaint that the Hari Nam Prachar Samithi members formed into an unlawful assembly and demolished public toilets, thereby violating

the orders of the Court, is incorrect. This Court specifically found that the land is a private patta land and belongs to Hari Nam Prachar Samithi. It is not the case of the Tahasildar/complainant that the alleged acts of demolishing tin sheds was in any other land which is not the land of the Hari Nam Prachar Samithi and subject matter of the writ petition.

8. The charge sheet is filed for the offence under section 148 r/w 149 of the Indian Penal code. Section 148 makes rioting by an unlawful assembly punishable. Section 149 makes every member of such unlawful assembly vicariously liable. Unlawful assembly is defined under Section 141 of the Indian Penal code, which is an assembly of five or more persons and if the common object of those persons is to commit a criminal act and consequently commits a criminal act, such members of the unlawful assembly are liable. Rioting is use of force or violence by an unlawful assembly as defined under section 146 of IPC. When only these two petitioners are identified and prosecuted, the question of either forming into an 'unlawful assembly' or committing acts of 'rioting' does not arise. Five or more persons have to be involved to call it an 'unlawful assembly'. These two petitioners cannot be prosecuted under section 148 of IPC.

9. Though there is an allegation in the complaint that several persons of the Hari Nam Prachar Samithi formed into an unlawful assembly and committed certain acts, only these petitioners are made as accused. The Hari Nam Prachar Samithi and its members even assuming have done certain acts of taking away sheds in their own land, the same would not amount to either criminal trespass or causing mischief and destruction of any public property. It is not the case of complainant that any sheds were erected in the property of Hari Nam Prachar Samithi with their permission.

10. “Public property” according to section 2(b) of PDPP Act 1984, means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of— (i) the Central Government; or (ii) any State Government; or (iii) any local authority; or (iv) any corporation established by, or under, a Central, Provincial or State Act; or (v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specifies.

11. The complainant / Tahsildar has not provided any proof or document to show that the tin sheds in the property of Hari Nam Prachar Samithi falls within the meaning of 'public property' nor the police has collected any proof. For the said reasons, the prosecution against these petitioners cannot be allowed to continue since none of the offences alleged are made out.

10. Accordingly, the Criminal Petition is allowed and the proceedings against these petitioners in C.C.No.988/2021 on the file of the XXII Additional Chief Metropolitan Magistrate, Secunderabad, are hereby quashed.

Miscellaneous applications, if any pending, shall stand closed.

K.SURENDER, J

Date: 15.03.2023

Note: L.R copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.2543 OF 2021

Dt.15.03.2023

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