

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10350 OF 2022

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioner/Accused in FIR No.32 of 2022 on the file of P.S.Shadnagar.

2. The case against the petitioner was registered for the offence under Section 188 of IPC on the basis of a complaint lodged by Assistant Executive Engineer, Irrigation Department, Shadnagar. In the complaint, the Assistant Executive Engineer stated that during her visit to Pocham Cheruvu, it was observed that Mahadev Mart, Indian Oil Petrol Bunk were newly constructed in FTL and buffer zone area of Pocham Cheruvu. The petitioner had applied for NOC in Sy.No.42/A and 375/A and later withdrew the said applications for personal reasons. However, he has constructed the said Mahadev Mart and Indian Oil Petrol pump in the very same survey number. In accordance with G.O.No168, dated 07.04.2012, 30 meters buffer should be provided from the FTL boundary of Lake and no building

activity shall be allowed. If the land is in bed land falling under FTL and buffer zone, such private persons are not allowed to take up any construction or any kind of development activity. For the reason of buildings being constructed and petrol bunk put up in the FTL and buffer zone, requested to register a criminal case against the petitioner.

3. On the basis of the said complaint, the police, Shadnagar registered a case under Section 188 of IPC.

4. Learned counsel for the petitioner would submit that the said complaint was filed after irrigation department tried to intervene with the construction and demolish the compound wall of the property. Aggrieved by such acts, petitioner filed W.P.No.1988 of 2022 and by an order dated 12.01.2022, directed the irrigation department and other respondents therein, not to interfere with the possession of the petitioner's property and not to demolish the compound wall without following due process of law. Complaint in the present case was received in the police station on 10.01.2022.

5. To punish for an offence under Section 188 of IPC, an order promulgated by public servant must be disobeyed causing obstruction, annoyance or injury, or risk of obstruction to any person lawfully employed. Further 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.

6. The petitioner having purchased the land mutated the same in the revenue records and thereafter leased out to Indian Oil Corporation after conversion of the property from agriculture to non-agriculture land. It cannot be said that such construction is in disobedience of any order promulgated by a public servant punishable under Section 188 of IPC by causing obstruction to a person who is lawfully employed. Admittedly, 'no objection' certificate from Tahsildar, District Collector, Ranga Reddy District were taken. Further a 'no objection' certificate was also taken from Commissioner of Police for putting up petrol pump.

7. In the event of the irrigation department on inspection and survey finding that the construction in the said land of the petitioner violates any of the government order restraining construction in FTL or buffer zone areas, the department can resort to demolishing the property in accordance with law. However, after obtaining all the relevant permissions, constructing the petrol bunk will not amount to an offence under Section 188 of IPC, as such, the FIR registered against the petitioner is liable to be quashed.

8. In the result, the proceedings against the petitioner in FIR No.32 of 2022 on the file of P.S Shadnagar are hereby quashed. However, this order will not preclude either police department or irrigation department from proceeding against the petitioner in any other manner whatsoever, permissible under law.

9. Accordingly, the Criminal Petition is allowed.

K.SURENDER, J

Date: 18 .01.2023

Note: LR copy to be marked.

THE HON'BLE SRI JUSTICE K.SURENDER

Crl.P.No.10350 of 2022

Dated: 18.01.2023

kvs