

THE HON'BLE SRI JUSTICE HARINATH.N

CRIMINAL PETITION No.2778 of 2025

ORDER:

1. Heard the learned counsel for the petitioners.
2. The learned counsel for the petitioners submits that the petitioners were arraigned as accused in C.C. No.1039 of 2023 on the file of the Judicial First Class Magistrate of Tadipatri. It is alleged that the petitioners have committed offences under Sections 171-E and 188 read with Section 34 of the Indian Penal Code, 1860.
3. The learned counsel for the petitioners submits that the de facto complainant is a flying squad appointed by the District Collector for the purpose of overseeing the MLC elections in the State in the year 2023. The learned counsel further submits that on the complaint submitted by the Member of the flying squad, the police have taken cognizance of the complaint, conducted an investigation and filed the charge sheet.
4. The learned counsel further submits that the police could not take cognizance of the complaint filed by the Member of the flying squad and submits that Section 195 of the Code of Criminal Procedure would prohibit any such cognizance by the police and that the complaint ought to have been filed by the officer before the competent

Magistrate. On receipt of such a complaint, the Court would take cognizance and conduct a trial.

5. The learned counsel also submits that in several cases, this Court also quashed the complaints at the stage of F.I.R. itself. A reliance is placed on the order passed by this Court in CrI.P. No.4647 of 2022, whereby a flying squad filed a complaint about certain cricket kits found in a vehicle, and the complaint was lodged before the police. It is submitted that Section 171 E of I.P.C. is not a cognizable offence. In paragraphs 7 and 8 of the judgment, this Court held that,

“7. Admittedly, in a summons case where non-cognizable offences have been alleged against the petitioner herein and two (2) others, the police ought to have taken prior permission from the jurisdictional Magistrate before conducting an investigation.

8. Section 155(2)Cr.P.C., reads as follows:

‘S.155. Information as to non-cognizable cases and investigation of such cases.

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2. No police officer shall investigate a non-cognizable case without the order of a Magistrate having the power to try such case or commit the case for trial.

6. Considering the submissions of the learned counsel for the petitioners, this criminal petition is allowed, and the proceedings in C.C. No.1039 of 2023 on the file of the Judicial First Class

Magistrate of Tadipatri are hereby quashed against the petitioners herein.

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

Dt.17.03.2025
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JUSTICE HARINATH.N