HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD

MAIN CASE No: Crl.P.No.14911 of 2025

PROCEEDING SHEET

SL. NO	DATE	ORDER	OFFICE NOTE
	14.11.2025	**JAK, J** This Criminal Petition is filed with the following prayer: "...to call for the records in C.C.No.370 of 2024 on the file of Hon'ble Special Judicial Magistrate of First Class for Excise at Hyderabad, and quash the same against the Petitioner herein and pass such other order or orders..." On the basis of a complaint dated 30.11.2023, an F.I.R. came to be registered as Crime No.771 of 2023 for the offences under Sections 143, 341 and 188 read with Section 149 of the Indian Penal Code, 1860, (for short "IPC") and Section 131 of the Representation of the People Act, 1951. Gist of the complaint is that petitioner, along with his followers, entered the school by crashing the gate and raised slogans in spite of being stopped by the Security Personnel present there in which polling took place in morning hours. The said incident occurred on 30.11.2023 at 20:00 hours. Petitioner–Accused No.1 is arrayed as an accused in the F.I.R. It is further alleged that Accused No.1, along with his followers, violated the Election Commission Guidelines and hence necessary action be taken. The complaint is filed by Mr. G. Shankar,	Transferred to IO folder, before corrections, if any.

SL. NO	DATE	ORDER	OFFICE NOTE
		Assistant Sub-Inspector of Police, No. 868 of P.S. Jangaon and it is addressed to Station House Officer (SHO), Jangaon. On this basis, F.I.R. came to be registered, and a charge sheet was filed before the Court of Principal Judicial First Class Magistrate at Jangaon, taken cognizance and numbered as C.C.No.370 of 2024. It is submitted by the learned counsel for petitioner that the Court below posted the matter for framing charges (matter is listed tomorrow) on 15.11.2025. Placing reliance upon the judgment of the Apex Court in ***Devendra Kumar v. State*** (NCT of Delhi) [2025 SCC Online SC 1753], it is contended that for making out an offence under Section 188 of I.P.C, the procedure laid down in Section 195 of the Cr.P.C. has to be followed and only the competent authority has to lodge a complaint and upon lodging of such complaint, the jurisdictional Court has to proceed with. It is contended that the said procedure as laid down under Section 195 of Cr.P.C has been violated hence offences under Section 188 of I.P.C and other connected Sections would not be attracted. Hence, a direction is sought to stay proceedings. On the other hand, learned counsel for State has contended that offences under Sections 143 and 341 IPC read with Section 149 of I.P.C and Section 131 of the Representation of the People Act, 1951 do not form an integral part and are not intrinsically connected to Section 188 of IPC and hence clause 5 of the conclusion	

SL. NO	DATE	ORDER	OFFICE NOTE
		portion of the Hon'ble Apex Court judgment is not applicable. The Hon'ble Apex Court while dealing with Section 195 of Cr.P.C in ***Devendra Kumar*** (Supra) held as follows: "59. We may summarize our final conclusion as under: (i) Section 195(1)(a)(i) of the Cr. P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein. (ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record. (iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr. P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.	

SL. NO	DATE	ORDER	OFFICE NOTE
		(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required. (v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr. P.C. This would all depend on the facts of each case. (vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr. P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr. P.C. is followed. 60. In view of the aforesaid, we dispose of this petition leaving it open to the petitioner to raise the contention as regards the bar of Section 195 of the Cr. P.C. before the trial court if at all, at the end of the investigation, chargesheet is filed for the offences enumerated above in the FIR. 61. Registry shall circulate one copy each of this judgment to all the High Courts.	

SL. NO	DATE	ORDER	OFFICE NOTE
		On a perusal of the contents of the record, a prima facie case has been made out as it is mandatory to follow the procedure under Section 195 of Cr.P.C. whenever an offence is to be tried under Section 188 of I.P.C. Procedure as laid down under Section 195 of Cr.P.C has not been followed. The law laid down by the Hon'ble Apex Court has categorically stated that the procedure under Section 195 of Cr.P.C has to be followed. For reasons aforesaid, there shall be a stay of all further proceedings in C.C.No.370 of 2024 on the file of Principal Judicial First Class Magistrate at Jangaon. Post after two (2) weeks i.e., 28.11.2025. **JAK,J** *ssm*	

SL. NO	DATE	ORDER	OFFICE NOTE