

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1948 OF 2015

ORDER:

The petitioner has preferred the present criminal revision case challenging the action of the learned Magistrate in taking cognizance for the offences under Sections 468, 471, 420 474, 475 and 467 IPC.

Heard and perused the material available on record.

The main contention raised by the learned counsel for the petitioner is that the petitioner being official of the Government is protected under Section 197 of the Code of Criminal Procedure (CrPC) since the offences allegedly committed by him are during discharge of his duties as a Government servant. Further, as per the protection given by the Wakf Act, there cannot be any prosecution against the petitioner and as such, he submits that the cognizance taken by the prosecution is erroneous in law.

On perusal of the charge sheet, this Court is of the view that without there being any other material available on record before the Court below, which necessitates the learned Magistrate to take cognizance of the case, the learned Magistrate took cognizance of the case, which is not proper. Further, it is also brought to the notice of this Court that the Government intends to withdraw the case against the petitioner and necessary orders are also passed to that extent and that the said orders are not placed before the Court below, as the learned Magistrate has taken cognizance in the absence of the accused concerned. The petitioner is not given any opportunity to raise his objections before the Court below prior to taking cognizance.

In view of the above discussion, the criminal revision case is disposed of with a direction to the petitioner herein to file an application before the Court below seeking discharge informing all the grounds raised by the learned counsel for the petitioner herein, which need to be appreciated by the Court below, and on such application,

the Court below is directed to appreciate the same and pass appropriate orders in accordance with law. Till such exercise is completed, the petitioner's presence before the Court below is dispensed with and he is directed to represent the case through his counsel. The Court below is directed to dispose of the application within three months from the date of receipt of copy of this order.

With the above directions, the Criminal Revision Case is disposed of. Consequently, the miscellaneous petitions pending in this revision, if any, shall stand closed.

JUSTICE RAJA ELANGO

10.09.2015

Note: Issue order copy by 11.09.2015.

(By order)

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