

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1346 OF 2015

ORDER:

The petitioner has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order dated 11.07.2014 passed in C.F.R.No.1868 of 2013 on the file of the II Additional Judicial Magistrate of First Class, Kadapa, whereby the learned trial Judge dismissed the complaint filed by the petitioner under Section 200 CrPC as not maintainable.

Heard and perused the material available on record.

Learned counsel for the petitioner submits that originally the petitioner/complainant has lodged a complaint before the Police concerned and when the police refused to receive complaint, the petitioner by invoking provision under Section 200 CrPC has filed the complaint before the Court, and that the Court below erroneously dismissed the complaint filed by the petitioner/complainant as not maintainable. He further submits that the observation of the Court below that the complaint is purely civil in nature and as such, cannot be taken on file for initiating criminal proceedings against the accused, is illegal and as such, prays to allow the present criminal revision case.

This Court is of the view that whenever a complaint is filed under Section 200 CrPC, the Magistrate concerned shall follow the procedure contemplated in law. The Magistrate shall examine upon oath the complainant and the witnesses, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. After this procedure, the Magistrate concerned either order for an enquiry and proceed with the case or directly take cognizance and proceed with the case. Before taking cognizance, the Magistrate can refer the same for investigation under Section 156(3) CrPC.

The learned trial Judge, without following the above procedure,

only after perusing the complaint and the documents annexed to the complaint, dismissed the complaint, which is illegal. Only after considering the statements on oath of the complainant and the witnesses, if any, and as result of which, if the learned Judge comes to a conclusion that there is no sufficient ground to proceed, then only he can dismiss the complaint after recording the reasons for dismissal of the complaint. Hence, the order of the Court below is liable to be set aside and is accordingly set aside.

In the result, the criminal revision case is allowed setting aside the order, dated 11.07.2014 in C.F.R.No.1868 of 2013 on the file of the II Additional Judicial Magistrate of First Class, Kadapa, and the learned Magistrate is directed to restore C.F.R.No.1868 of 2013 on its file and after examination of the complainant, and the witnesses, if any, on oath, to pass appropriate orders in accordance with law.

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

JUSTICE RAJA ELANGO

29.07.2015
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