

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.130 OF 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein challenging the order dated 18.12.2007, passed by the VI Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.1000 of 2007, whereunder and whereby the learned Magistrate has taken cognizance of the case for the offences punishable under Sections 420, 406 & 506 of the Indian Penal Code, 1860 (for short 'the I.P.C') and ordered to issue summons against the revision petitioners herein.

2. The revision petitioners herein are A.1 to A.3, whereas respondent No.1 is the complainant in C.C.No.1000 of 2007 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C before the trial Court.

3. The brief facts of the case are that originally, the complainant lodged a private complaint before the IX Additional Metropolitan Magistrate, Hyderabad, and the said complaint was registered as a case in Cr.No.188 of 2004 on 21.05.2004. The Investigating Officer after investigating the case, filed a final report dated 16.07.2004, stating that it is a clear case of breach of contract between the parties, who are closely related to each other and the dispute is of civil in nature. After receiving the report, police closed the case. Thereafter, the complainant filed the protest petition stating that the police wrongly closed the case under the influence of the accused persons, without investigating and without recording the statements. After considering the protest petition, the IX Additional Metropolitan Magistrate, Hyderabad, passed an order on 06.11.2004 directing the Assistant Commissioner, Asifnagar Police Station, Hyderabad, to depute any other police officer of Asifnagar Police Station to conduct investigation and to file the report. Thereafter, another final report No.42 of 2005 dated 23.05.2005 was filed by the police. In that report, it was stated that the complainant in spite of their best efforts, failed to appear in the police station and not produced any witnesses for examination; that the complainant

was not cooperating to investigate the case; and that on 29.01.2005, the complainant came to police station and gave a petition stating that he compromised with the accused, who are his brothers-in-law, and settled the matter amicably and requested to withdraw the case. After filing the final report, the complainant again filed another petition in Crime No.188 of 2004 with the same facts, but added A.3, who is the wife of A.1 as one of the accused. In that petition, the complainant denied the allegation that he failed to cooperate with the Investigating Officer and denied about giving any petition showing the compromise entered between himself and the accused and stated that police as a part of investigation, obtained his signature on some papers and they may have been converted them as petitions for compromise and prayed the Court to issue summons to A.1 to A.3.

On 30th August 2007 and 2nd November 2007, the statements of PWs.1 & 2 i.e., complainant and his son were recorded by the Magistrate. Thereafter, on 18.12.2007 after hearing the complainant and after perusing the record, the Court held that there is *prima facie* case against A.1 to A.3, taken the case on file for the offences punishable under Sections 420, 406 & 506 I.P.C and issued summons against them. Aggrieved by the said order, the present revision case is filed.

04. The learned counsel for the revision petitioners/A.1 to A.3 argued that the Magistrate mechanically took cognizance and numbered the case as C.C.No.1000 of 2007 without proper application of mind and no *prima facie* case was made out against the revision petitioners herein for the offences punishable under Sections 420, 406 & 506 I.P.C; that the learned Magistrate failed to see the second complaint on the same facts as not maintainable; that the statement of the complainant and his son would not make out any of the offences, and the Magistrate erred in not at all considering final report No.42 of 2005 dated 23.05.2005 submitted by the Police, Asifnagar Police Station, Hyderabad, wherein it is specifically averred that on 29.01.2005, the complainant submitted a petition before the police stating that he compromised with his brothers-in-law, who are A.1 & A.2 and settled the matter amicably and requested to withdraw the case and the Magistrate erred in entertaining the fresh complaint under Sections 190 & 200 Cr.P.C against A.3, who is the wife of A.1 alleging the same offence; that the Magistrate erred in not giving any

credence to the final report dated 16.07.2004, submitted by the Station House officer, Asifnagar Police Station, wherein the Investigating Officer stated that the dispute is of civil in nature and finally prayed the Court to allow the revision and to set aside the order dated 18.12.2007 passed by the VI Additional Chief Metropolitan Magistrate, Hyderabad.

05. On the other hand, the learned Public Prosecutor argued that there is no complaint filed by the complainant; that the second complaint lodged by the complainant is nothing but protest petition filed in Cr.No.188 of 2004; that first complaint is not closed and therefore, the contention of the revision petitioners that second complaint was filed by the complainant is not correct; and that after recording the evidence of PWs.1 & 2, the learned Magistrate issued summons to A.1 to A.3, therefore the said order needs no interference and prayed the Court to dismiss the revision case.

06. Now, the point for determination is --

Whether the revision petitioners herein are entitled to set aside the order dated 18.12.2007 passed by the VI Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Sections 420, 406 & 506 I.P.C, as prayed for or not?

07. **P O I N T:** A perusal of the evidence shows that originally, the complainant lodged a private complaint under Section 200 Cr.P.C before the IX Additional Metropolitan Magistrate, Hyderabad, and the same was referred to the concerned Station House Officer for investigation. After receiving the complaint, police, Asifnagar, registered the case in Cr.No.188 of 2004 on 24.05.2004. After investigation, the Sub-Inspector of Police filed final report dated 16.07.2004 stating that the case falls as one under breach of contract and civil in nature. Thereafter, the complainant filed the protest petition, on which again on 6th November, 2004, the learned Magistrate passed an order directing the Assistant Commissioner, Asifnagar Division, to depute any other police officer of Asifnagar Police Station to conduct proper investigation. Thereafter, the police also filed another report No.42 of 2005 dated 23.05.2005, wherein they clearly mentioned that complainant himself gave a petition to the police stating that he compromised with the accused and he settled the matter amicably and it is the case of lack of evidence i.e., compromised.

08. Thereafter, the complainant after filing the final report by the police filed another petition under Section 200 Cr.P.C, wherein he alleged the offence against A.3 also, who is the wife of A.1. In the first complaint, there are no allegations against A.3. The learned counsel for the revision petitioners argued that this petition filed by the complainant under Section 200 Cr.P.C is the second complaint, as such it is not maintainable and relied upon the case laws reported in ***T. T. Antony v. State of Kerala and others with Damodaran P. and others v. State of Kerala and others and State of Kerala and others v. Revada Chandrasekhar and others***, wherein it is held at para 20 as follows:

“20. From the above discussion it follows that under the scheme of the provisions of Sections 154 155 156 157 162 169 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.”

and ***Bindeshwari Prasad Singh v. Kali Singh***, wherein it is held as follows:

“4. We might mention that the order dated 23rd November, 1968 was a judicial order by which the Magistrate had given full reasons for dismissing the complaint. Even if the Magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the CrPC of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. CrPC does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers.....”

09. A perusal of the record shows that the earlier complaint was filed by the complainant under Section 200 Cr.P.C against A.1 & A.2. A.1 is the brother-in-law of complainant and A.2 is the brother of A.1. In the said complaint, there is no allegation against A.3. As the Investigating Officer filed the final report No.76 of 2004, the complainant filed a protest petition and the Magistrate passed the orders and instructed the Assistant Commissioner, Asifnagar Division to entrust the investigation to other police officer. Admittedly, the Sub-Inspector investigated and filed final report No.42 of 2005 before the Magistrate referring

the case as lack of evidence (compromised). The complainant challenged the said order by filing another petition. A perusal of the original record shows that after filing the second final report by the police, the complainant filed the petition under Section 200 Cr.P.C and the Court has taken the said petition as objection petition; that on 29.03.2007, the complainant was present before the Court and on that day, the Court observed that protest petition was returned by the police as the complainant compromised with the accused; and that the complainant, who was present before the Court reported that no compromise was effected, as such the matter was posted for recording of evidence. Therefore, on 30th August 2007 the sworn statement of the complainant was recorded and on 02.11.2007, the sworn statement of PW.2, who is the son of complainant, was recorded. On 18.12.2007, complainant was present and after hearing the complainant and after perusing the record, the learned Magistrate passed the orders that there is *prima facie* case against A.1 to A.3, taken the cognizance of the case and ordered to issue summons against them. Admittedly, there is no second complaint filed by the complainant against A.1 to A.3. But, it is an admitted fact that A.3's involvement was not there in the original complaint filed by the complainant and the same was registered as Cr.No.188 of 2004 against A.1 & A.2. Only in the objection petition, he added A.3 as one of the accused, which is not admissible and there is no second First Information Report in respect of the same cognizable offence as contended by the revision petitioners. Therefore, in view of the circumstances of the case, I am of the view that the order dated 18.12.2007 shall be set aside against A.3 and confirmed against A.1 & A.2.

10. Accordingly, the Criminal Revision Case is partly allowed setting aside the order dated 18.12.2007 passed by the VI Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.1000 of 2007 against A.3 only, while dismissing against A.1 & A.2.

11. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 16.04.2015

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