

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4027 OF 2015

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ORDER:

This Criminal Petition is filed by the petitioner/complainant under Section 482 Cr.P.C seeking to quash the proceedings in CrI.M.P.No.2420 of 2014 in C.C.No.1624 of 2012 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad, dated 19.12.2014 and consequently appoint an advocate commissioner to record the chief examination of the petitioner.

The petitioner is the complainant and the private complaint was taken cognizance on his report by adopting the procedure under Section 200 Cr.P.C. by the learned XI Additional Chief Metropolitan Magistrate, Secunderabad, against the accused for the offence punishable under Sections 420, 120-B, 405 and 506 I.P.C. as C.C.No.1624 of 2012 under Section 190 Cr.P.C. From the above penal provisions, it is a warrant procedure to be adopted before the trial Magistrate. Needless to say under Sections 244 to 246, the procedure to be adopted is at the post cognizance stage, examination of the complainant and witness if any and right of accused either to cross examine or defer cross examination and submit any arguments for framing of charges and once charges are framed and not discharged; the complainant/P.W.1 and other witnesses already examined on behalf of the complainant can be tendered for cross examination by accused.

A perusal of the order is not so clear as to what is the stage, so also from the application filed impugning the order of the lower Court in CrI.M.P.No.2420 of 2014 dismissing the application filed by the petitioner/complainant under Section 284 Cr.P.C. for his examination on commission to record his evidence claiming as further sworn statement. Needless to say, from what is referred supra it is not a pre-cognizance sworn statement under 200 Cr.P.C. r/w 202 Cr.P.C. which cannot be called as sworn statement but for chief examination at post cognizance stage even before framing of charges under Sections 244 and 245 Cr.P.C. Needless to give much emphasis to the lose reference once already examined in chief at this stage before framing charges, the question of

further chief examination generally does not arise unless sought for permission at the post charges and examination on charges stage in proceeding with trial contemplated by Section 246 Cr.P.C. Leave it as it is, the procedure to be followed; coming to the core of the application that was ended in dismissal impugning in this petition under Section 482 Cr.P.C. A perusal of the so called medical report of Usha Mullapudi Cardiac Centre dated 25.09.2014 speaks the complainant/P.W.1 is suffering from a typical chest pain does not even disclose but for saying he had a O.P. consultation on 25.09.2014 for regular cardiac consultation, as to he got prolonged illness there from and cannot take ordeal of journey in the absence of it, the Magistrate is right in not exercising the discretionary jurisdiction to examine the complainant, material witness to the case that too, taking away the right of the accused to cross examine the said witness before the Court and the right of the Court to observe demeanour of the witnesses. For no such observation of demeanour of the witnesses provided by a commission even from the reading of Section 284 Cr.P.C.

Having regard to the same, this Court while sitting against the order, under Section 482 Cr.P.C. does not come under any of the three riders required to be complied with to entertain.

Accordingly, this Criminal Petition is dismissed before admission. Needless to say in the event of making any request by the petitioner for his post charges examination by cross examination or re-examination or further chief examination as the case may be, the learned Magistrate shall consider to record in camera from his psychological fear to depose in the public view. Needless to say the accused got the right to represent through advocate and participate in that camera proceedings in the event of filing of any application to entertain the complainant to represent through G.P.A. holder or special vakalat, the learned Magistrate shall consider after the said examination for further proceedings.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 08-06-2015

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