

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 573 of 2009

Order:

This Criminal Revision Case is directed against the orders, dated 30.03.2009, passed in CFR No.533 of 2009 in Spl. PRC No.3 of 2009 (Crime No.85 of 2008 of Rajupalem Police Station), by the I Additional Judicial Magistrate of First Class, Proddatur, taking cognizance of the offences against the petitioners/A2 and A3 herein along with the non-petitioner/A1.

2. The facts giving rise to filing of the present Criminal Revision Case, in brief, are as follows. The first respondent/*de facto* complainant filed a complaint with the jurisdictional police on 24.09.2008 alleging that while she and her deceased husband were returning to their house after fetching drinking water from the village Gilakala Bavi, the non-petitioner/A1 hacked her husband with an axe and at that time the petitioners/A2 and A3 have instigated the non-petitioner/A1 to kill her husband. On the basis of the said complaint, a case in Crime No.85 of 2008 was registered against the non-petitioner/A1 and the petitioners/A2 and A3 for the offences punishable under Sections 302, 109 read with Section 34 IPC and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, during the course of investigation, the police found that there is no independent corroboration with regard to presence of the petitioners/A2 and A3 and, therefore, after obtaining appropriate orders from their superior officers, they filed charge sheet against the non-petitioner/A1 by deleting the names of the petitioners/A2 and A3. Thereafter, the learned Magistrate, having found that though the names of A1 to A3 were shown in the FIR, but the police have filed charge sheet against the non-petitioner/A1 by deleting the names of the petitioners/A2 and A3, issued notice to the first respondent/*de facto* complainant and, pursuant thereto, she made her appearance before the Court below and filed a protest petition contending that the case needs to be proceeded against the petitioners/A2 and A3 also. The learned Magistrate, after recording the sworn statements of both the first

respondent/*de facto* complainant and one Kasireddy Lakshmi Narayana Reddy, who are the eye witnesses to the incident, took the cognizance of the alleged offences against the petitioners/A2 and A3 and the non-petitioner/A1 (against whom originally the charge sheet was filed). Aggrieved by the same, the petitioners/A2 and A3 have filed the present Criminal Revision Case.

3. The contention of the learned counsel for the petitioners is that no notice can be given to the *de facto* complainant by the learned Magistrate at the stage of taking cognizance of the offence and the learned Magistrate erred in giving notice to the *de facto* complainant before taking cognizance of the offence, merely on the basis of charge sheet filed by the police. He further contended that, when the police filed charge sheet by deleting the names of the petitioners/A2 and A3, at best the remedy available either to the Court or to the victim is to invoke the provisions of Section 319 Cr.P.C., which provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed and, therefore, the impugned order passed by the learned Magistrate, taking cognizance of the offence against the petitioners/A2 and A3, is liable to be set aside.

4. On consideration of the entire material on record, the submissions made by the learned counsel for the petitioners cannot be said to be well founded. When the *de facto* complainant made a complaint against certain persons and if the investigating agency, after investigation, does not find sufficient material to charge sheet the said persons and files a report either it be a charge sheet or final report, the *de facto* complainant/aggrieved person is entitled to notice for filing objections. This is clear from a reading of Section 173(2)(ii) of Cr.P.C., which reads as under.

173. Report of police officer on completion of investigation.

[\(1\)](#)

[\(2\)](#) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

5. In view of the above provision, since the police have filed charge sheet against the non-petitioner/A1 by deleting the names of the petitioners/A2 and A3, the *de facto* complainant is entitled to notice. It is the *de facto* complainant, who gave complaint alleging that at the instigation of the petitioners/A2 and A3 the non-petitioner/A1 hacked her husband with an axe. When the police have not filed charge sheet against the petitioners/A2 and A3, it amounts to discharging/exonerating them from the alleged offences. Therefore, the first respondent/*de facto* complainant is entitled to notice as per the provisions of Section 173(2)(ii) of Cr.P.C., and, accordingly, the learned Magistrate has rightly exercised his jurisdiction and issued the notice calling upon the *de facto* complainant to submit her objections, if any. Pursuant thereto, the *de facto* complainant made her appearance before the Court below and filed a protest petition. The learned Magistrate, after recording the sworn statements of both the first respondent/*de facto* complainant and one Kasireddy Lakshmi Narayana Reddy, who are the eye witnesses to the incident and on being satisfied with the evidence produced by the *de facto* complainant, took the cognizance of the alleged offences against the petitioners/A2 and A3 and the non-petitioner/A1 (against whom originally the charge sheet was filed) and I see no illegality or irregularity in the order passed by the learned Magistrate warranting interference of this Court. The revision case is devoid

of merit and the same is liable to be dismissed.

6. Accordingly, the Criminal Revision Case is dismissed. However, since the offence was said to have taken place as long back as on 24.09.2008 and the cognizance of the offence was taken by the learned Magistrate on 30.03.2009, the learned Magistrate is directed to take expeditious steps for committing the case to the Court of Sessions and, thereafter, the concerned Sessions Judge shall dispose of the case in accordance with law, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of the case from the committal Court.

7. As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 05.11.2015

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