

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CRIMINAL PETITION No.3752 of 2015**

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**ORDER :**

This Criminal Petition is filed by the Petitioners/accused Nos.1 to 5 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.94 of 2015 on the file of Additional Judicial Magistrate of the First Class, Razole, East Godavari District which was registered for the offences punishable under Section 120-B, 442, 447, 448, 503, 506 read with 34 I.P.C.

2) Heard the learned counsel for Petitioners/accused and the 1<sup>st</sup> respondent-State represented by the learned Public Prosecutor before ordering notice to the complainant of the private complaint case, 2<sup>nd</sup> respondent herein. Perused the material on record.

3) A perusal of the docket orders show that the Magistrate simply passed the impugned order dated 07.04.2015 of taking cognizance of the case on perusal of the complainant and documents said to have been filed, without examination and recording the sworn statements of the complainant and the witnesses if any and consideration of the same also before passing order taking the cognizance for the complainant is not even a public servant of any occurrence while discharging duties to dispense with recording of sworn statement. It clearly proves that the Magistrate did not follow the mandatory procedure contemplated by Sections 200 and 202 Cr.P.C by examination and recording the statement on oath of the complainant and witnesses present, if any (if it is summons case) or by summoning the witness shown in the complaint at the request of the complainant if it is a warrant case as well laid down by the apex Court in ***Rosy V. State of Kerala.***

4) Thus, the procedure adopted by the learned Magistrate is illegal and it is the duty of the Court under Section 482 and 483 Cr.P.C to rectify the same based on the principle of law governed by

the Latin Maxim '*actus curiae neminem gravabit*', as the action of the Magistrate not sanctioned by law shall not prejudice the rights of the complainant or accused. Thereby while setting aside the orders taking cognizance and issuance of summons to accused to appear, the Magistrate is directed to restore the complainant to file and adopt the procedure as contemplated under Section 200 to 204 Cr.P.C and as laid down by the Apex Court in ***Rosy*** supra.

5) With the above observations, the criminal petition is disposed of.

6) Miscellaneous petitions, if any pending, shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Dt.02<sup>nd</sup> June, 2015**

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