

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.769 of 2016

ORDER:

Assailing the docket order dated 21.12.2015 passed in C.C.No.1318 of 2015 by the IV Additional Junior Civil Judge-cum-XXV Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, Ranga Reddy District, present revision is filed by the petitioner-A.4.

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor for the first respondent-State.

As seen from the record, originally 2nd respondent herein filed a private complaint before the Court of XXV Metropolitan Magistrate, Cyberabad at Kukatpally, against revision petitioner and others, which was referred to Police under Section 156 (3) Cr.P.C.. Pursuant to which, a case in crime No.834 of 2014 of Mahapur Police Station, Cyberabad District, came to be registered for the offences punishable under Sections 420, 468, 471, 354, 379, 323 and 506 r/w.34 IPC. After investigation, the Police filed a final report referring the case as 'civil in nature'. Aggrieved by the same, the second respondent herein filed a protest petition before the Court wherein the said Court after recording the sworn statements, took cognizance of the matter vide C.C.No.1318 of 2015 for the offences punishable under Sections 420, 379, 323 and 506 r/w.34 of Indian Penal Code against A.1 to A.5 and issued summons to the accused. Aggrieved by the same, the present revision is preferred by A.4.

The order under challenge reads as follows:

“Heard. Perused the Protest petition, sworn statements of PW1 and PW2 and Ex.P.1 to P.3. Upon consideration of the material available on record, this petition is allowed. Taken cognizance as CC 1318/2015 for the offences U/secs.420, 379, 323, 506 r/w.34 IPC against A1 to A5. Issue SS to accused on Payment of Process. Call on 02/02/2016.”

The issue as to application of mind while taking cognizance was came up for consideration in catena of judgments before this Court as well as before the Apex Court.

In **S.R.Sukumar v. S.Sunaad Raghuram**⁽¹⁾ the Apex Court at paragraph No.8 of its judgment, observed as follows:

“8. Section 200 Cr.P.C. provides for the procedure for the Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 Cr.P.C.

“A magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any

clearly suggests that for taking cognizance of an offence on complaint, the Court shall examine the complainant upon oath. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the

¹ (2015) 9 SCC 609

complaint and indicates that the Magistrate takes judicial notice of an offence.”

In **S.Purnachandra Rao and another v. State of Andhra**

Pradesh and another⁽²⁾, this Court held as follows:

“ 7. In **Medwin Hospitals, rep., by its M.D., B.Kameswara Rao Vs State of A.P., Pollution Control Board**³, a learned single Judge of this Court, while considering the issue as to the nature of order to be passed while taking cognizance of the matter held as under :

“There is absolutely no doubt whatsoever to hold that criminal law cannot be set in motion against an accused person in a very casual and mechanical manner. The Magistrate before taking cognizance is duty bound to meticulously peruse the contents of the complaint so as to satisfy himself that such contents do reveal the commission of offence as alleged. The question of issuing a process does not arise without the learned Magistrate forming an opinion based on the material available at the time of taking cognizance. The learned Magistrate is required to not only look into the contents of the complaint but also statement of the complainant and the witnesses, if any, examined and other material including the documents made available by the complainant. Such application of mind is a condition precedent for issuing a process against the accused. It is well settled that issuing process in a criminal case against an accused itself is fraught with serious consequence. But in my considered opinion, it is not necessary for the learned Magistrate to pass an elaborate order disclosing as to why he intends to take cognizance of a case. It would meet the requirement of law, if the proceedings on the file of the learned Magistrate would disclose the application of mind. After all, the learned Magistrate is not deciding any case at that stage. All that is required is that he has to satisfy himself that the contents of the complaint prima facie reveal the commission of the alleged offence. The learned Magistrate in the instant case passed the following order :

² 2014 (2) ALD (Cri.) 674

³ 1998 (4) ALD 670

“Perused the complaint. Case is taken on file for the offence 43 & 44 r/w.24, 25 and 26 of the Water Prevention and Control of Pollution) Act, 1974 against the accused. Issue summons against the accused. Call on 21.8.96.”

The same would disclose application of mind, though it would have been advisable for the learned Magistrate to indicate that the complaint discloses the commission of the alleged offence. However, it is required to observe that the learned Magistrate could have been somewhat articulate in recording his satisfaction.”

The order of taking cognizance by the Magistrate clearly indicates non-application of mind to the facts in issue before issuing summons to the accused.

In view of the judgments referred to above, the order under challenge is set aside in respect of petitioner herein and the Magistrate is directed to pass an order showing application of mind to the facts in issue within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Criminal Revision Case is allowed. Miscellaneous petitions pending in this revision, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

01.09.2016
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