

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.4289 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking a direction to the learned Judicial Magistrate of First Class, Huzurnagar to conduct trial in C.C.No.877 of 2009 pending on his file by following procedure contemplated under Chapter XIX B of the Code of Criminal Procedure, 1973 and to dispose of the same in accordance with law.

Heard and perused the material on record.

The main grievance of the petitioner/complainant is that since the learned Magistrate has not followed the procedure contemplated under Chapter XIX B dealing with the cases instituted otherwise than on police report in C.C.No.877 of 2009 arose out of a private complaint, the Magistrate expressed his opinion in the open Court that the complaint is liable to be dismissed, apprehending of which, the petitioner/complainant filed the present criminal petition.

Admittedly, the petitioner/complainant filed a private complaint against respondents 2 and 3 herein for the offences alleged under Sections 493 and 204 IPC, which was taken on file as C.C.No.877 of 2009 pending on the file of the learned Judicial Magistrate of First Class, Huzurnagar. When a case instituted otherwise than on a police report, no doubt, the

procedure as contemplated under Chapter XIX B dealing with cases instituted otherwise than on police report, has to be scrupulously followed. But in the present case, even though the case was instituted otherwise than on police report, the learned Magistrate, instead of following the procedure under Chapter XIX B of Cr.P.C., followed the procedure by framing charges under Section 239 Cr.P.C., which is a procedural irregularity. Mere procedural lapses on the part of the Court would not make the parties to suffer. If at all, if there is a procedural irregularity, the same can be corrected by directing the learned Magistrate to follow the procedure as contemplated under Chapter XIX B of Cr.P.C.

Therefore, the learned Judicial Magistrate of First Class, Huzurnagar is directed to hear the complainant/prosecution and take all such evidence as may be produced in support of the complainant/prosecution as contemplated under Section 244 Cr.P.C. Thereafter, if such evidence, in the opinion of the Magistrate, does not disclose any commission of offence, the learned Magistrate is at liberty to discharge the accused persons as contemplated under Section 245 Cr.P.C. and that if such evidence, in the opinion of the Magistrate, discloses any commission of offence, the learned Magistrate shall frame the charges as contemplated under Section 246 Cr.P.C. and to proceed further in accordance with law.

Subject to the above directions, the Criminal

Petition is disposed of. Consequently, miscellaneous petitions, if any, pending shall stand closed.

RAJA ELANGO, J

Date: 06-04-2016

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