

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2876 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 18.10.2016 passed in CrI.M.P.No.941 of 2016 in P.R.C.No.3 of 2016 in F.I.R.No.67 of 2015 on the file of the Court of the Additional Judicial Magistrate of First Class at Bodhan.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that basing on the complaint of the second respondent, the Station House Officer, Kotagiri Police Station, registered a case in Crime No.67 of 2015 against the petitioner for the offences punishable under Sections 420 and 417 I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 376, 417 and 420 I.P.C. The learned Additional Judicial Magistrate of First Class at Bodhan, has taken the cognizance of the offences under Sections 376, 417 and 420 I.P.C. against the petitioner and numbered it as P.R.C.No.3 of 2016.

4. While things stood thus, the second respondent herein filed CrI.M.P.No.941 of 2016 in P.R.C.No.3 of 2016, under Section 112 of the Indian Evidence Act, to direct the petitioner herein to undergo D.N.A. Test and the learned Magistrate allowed the said petition.

5. The contention of the learned counsel for the petitioner is that the committal Court has no right whatsoever to pass the orders of this nature.

6. Learned counsel for the second respondent, in all fairness, submitted that the order passed by the committal Court is not legally sustainable.

7. The committal Court taken the cognizance of offences under Sections 417, 420 and 376 I.P.C. The offences alleged to have been committed by the petitioner is exclusively triable by the Court of Sessions. In such circumstances, the role of the learned Magistrate is to follow the procedure as contemplated under Sections 207 and 209 Cr.P.C. More over, the committal Court passed the impugned order without assigning reasons, much less, cogent and convincing reasons. This itself is sufficient to set aside the impugned order. The committal Court has no right whatsoever to pass the orders of this nature. The committal Court passed the impugned order without any jurisdiction. Any order passed by the Court without jurisdiction is *non est* in the eye of law.

8. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order dated 18.10.2016 passed in CrI.M.P.No.941 of 2016 in P.R.C.No.3 of 2016 in F.I.R.No.67 of 2015 on the file of the Court of the Additional Judicial Magistrate of First Class at Bodhan.

9. Accordingly, the Criminal Revision Case is allowed setting aside the order dated 18.10.2016 passed in CrI.M.P.No.941 of 2016 in P.R.C.No.3 of 2016 in F.I.R.No.67 of 2015 on the file of the

Court of the Additional Judicial Magistrate of First Class at Bodhan. However, allowing of this revision does not preclude the second respondent to file similar type of application at appropriate time before the competent Court.

10. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 29.12.2016
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