

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.3448 OF 2014
ORDER:

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This Criminal Petition is filed by the petitioners-A.1 & A.2 under Section 482 of Cr.P.C. seeking to quash the proceedings in C.C. No.377 of 2014 pending on the file of III Additional Chief Metropolitan Magistrate, Hyderabad for the offences under Sections 420, 406 and 304-II IPC.

The main grievance of the petitioners herein is that while taking cognizance of the offence, the learned Magistrate has not followed the procedure prescribed since he has examined only the complainant and has taken cognizance of the offence under Section 304-II and he has given C.C. number for the said case.

This Court by order dated 1.4.2014 directed the learned Magistrate to give his explanation as to how he has numbered the said C.C. when the offence is exclusively triable by the Sessions Court. The learned Magistrate submitted his report stating that his predecessor has taken cognizance of the offence and the same is posted for examination of the witnesses and sought direction from this Court to alter the C.C. into PRC number.

The learned counsel for the petitioners submitted that while taking cognizance of an offence, which is triable by a Court of Sessions that too in a complaint preferred by a person under Section 200 Cr.P.C., the learned Magistrate has to examine all the witnesses and thereafter he has to decide whether the complaint discloses any cognizable offence triable by a Court of Sessions.

This Court is of the view that when there is an offence which is triable by a Court of Sessions that too instituted

otherwise than on police report, the learned Magistrate should examine not only the complainant but also the other witnesses produced/cited by the complainant and thereafter he has to decide the case in accordance with law. In view of the same, the cognizance of offence taken by the learned Magistrate is liable to be set aside since he has not followed the procedure prescribed.

For the above reasons, the cognizance taken by the III Additional Chief Metropolitan Magistrate, Hyderabad in C.C.NO.377 of 2014 against the petitioners herein is set aside and the learned Additional Chief Metropolitan Magistrate is directed to follow the procedure, examine the complainant as well as any other witnesses, if any, produced by the complainant and thereafter proceed with the case in accordance with law.

The Criminal Petition is accordingly disposed of.

Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

09.03.2016

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