

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL.

CRL.P.No.13276 of 2010

Oral Order:

Heard the learned counsel for the petitioners and the learned Public Prosecutor.

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.9 of 2010 on the file of the Special Mobile Magistrate Court, Kurnool.

The above C.C. arises out of a private complaint filed by the first respondent-S.I. of Police, Isvi Police Station, Adoni, Kurnool District for the offence punishable under Section 500 IPC, which was referred by the learned Additional Judicial First Class Magistrate, Kurnool to the 2nd respondent-Inspector of Police, Kurnool Taluk Police Station, Kurnool District under Section 156(3) Cr.P.C for investigation and report. Pursuant to the said reference, the second respondent-Inspector of Police registered crime No.18 of 2003 and subsequently filed charge sheet. It is submitted that the first respondent herein was said to be working as Sub Inspector of Police in Isvi Police Station, Adoni, Kurnool and that on 28.11.2002 the first

respondent went to a cinema theatre and threatened the people to re-exhibit the film and when that was refused, the first respondent said to have created havoc by abusing the people in the theatre and at that time the first respondent was fully in drunken condition and was in mufti. It is alleged that the police tried to ignore the incident, but in Eenadu daily news paper on 3.12.2002 the matter was published; that subsequently the departmental people also have conducted an enquiry and suspended the first respondent for his alleged unruly behavior.

Be that as it may, the contention of the petitioners herein is that allegations leveled in the complaint are one punishable under section 500 IPC and as per the provisions of the Section 199 Cr.P.C., the prosecution cannot be launched by the State through the police but the aggrieved person has to file a complaint. In the instant case the de-facto complainant filed the complaint before the Magistrate which was referred to the police for investigation, the police have investigated and filed charge sheet and cognizance was taken for offence punishable under section 500 IPC by the learned Magistrate.

As seen from the provisions of Section 199 Cr.P.C., no Court shall take cognizance of an offence punishable

under Chapter XXI of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. The first respondent-Sub Inspector of Police cannot be said to be an aggrieved person.

Learned counsel for the petitioners has also brought to the notice of this Court unreported judgment of this Court in CrI.P.No.1577 of 2004 dated 2-3-2006, in which facts were similar to the present case. In that case also the aggrieved person was a police officer and the charge sheet was filed by the investigating officer and that the learned Magistrate took the cognizance of the offence on the charge sheet filed by the police. In those circumstances, this Court while allowing Criminal Petition No.1577 of 2004 held that -

“... Even if the person defamed is a police officer, he has to approach the Court by way of a private complaint but the police cannot register a crime and file charge sheet in that regard. Even if it is assumed that it falls under Section 199(2) Cr.P.C., Sessions Court is competent to take cognizance of such offence upon a complaint in writing made by the public prosecutor and in that connection the Public Prosecutor shall obtain sanction from the State Government to file such complaint. The

procedure prescribed in sub-sections 2,3 and 4 of Section 199 Criminal Procedure Code was not followed in the case on hand.”

In the present case also taking of cognizance by the learned Magistrate on the basis of the charge sheet is clearly hit by the provisions of Section 199 Cr.P.C. In that view of the matter all further proceedings in C.C.No.9 of 2010 on the file of the Special Mobile Magistrate Court, Kurnool are quashed.

The criminal petition is accordingly allowed. No costs. Miscellaneous Petitions if any shall stand closed.

JUSTICE M.S.K.

JAISWAL

Dated: 5-2-2016

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