

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16750 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings of taking cognizance of the offences against A.4 to A.7 along with A.1 to A.3 for the offences punishable under Sections 147, 148, 323, 506 and 302 read with 149 of I.P.C. and under Section 3(x) and 3(2) (v) of Scheduled Caste and Schedule Tribe (POA) Act.

The main ground urged before this court is that alleged offences committed by accused Nos.1 to 3 is inclusive of offences punishable under Sections 147, 148, 323, 506 and 302 read with 149 of I.P.C. and under Section 3(x) and 3(2) (v) of Scheduled Caste and Schedule Tribe (POA) Act but the court took cognizance against the persons who are deleted in the charge sheet. The committal court took cognizance against the petitioners for the afore said offences.. The power under Section 209 Cr.P.C. are limited and the Magistrate cannot exercise such power of taking cognizance against the persons other than accused and similar question came up in a decision of Supreme Court reported in *HARDEEP SINGH vs. STATE OF PUNJAB & ORS.* ⁽¹⁾, wherein, in paragraph 43 of the said decision, the apex court held as follows:

"43. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under

¹ (2014) 3 SCC 92

Section 319(1) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind."

But here, the learned Magistrate took cognizance against the persons who are not arrayed as accused and such taking cognizance is illegal under Sections 207 to 209 of Cr.P.C.

Taking cognizance against these petitioners by the committal court is hereby set aside and the order passed by the Magistrate is set aside directing the learned Magistrate to follow the procedure under Sections 207, 208 and 209 Cr.P.C. and commit the matter to the Session Division if case is exclusively triable by court of session and on such committal after Registration, it is the duty of the Sessions Court to take appropriate action.

Accordingly, this Criminal Petition is allowed while directing the learned Magistrate to follow the procedure under Sections 207 to 209 Cr.P.C. and commit the matter in accordance with law.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 15-12-2016.

Dvs.

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Dvs