

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.R.C.No.2203 OF 2016

ORDER :

The petitioners 1 to 4 are the accused in CFR No.4602 of 2010 on the file of II Additional Sessions Judge, Kurnool, which is out come of the occurrence allegedly during 18.02.2010 to 24.02.2010 from alleged wrongful police custody and ill-treatment on report of wife of the so called K.Mallikarjuna, who is no other than husband of respondent No.2 to the revision case, pursuant to the search warrant in Crl.M.P.No.679 of 2010 from Advocate Commissioner appointed by the learned Judge, the said Mallikarjuna said to have been brought to the Court and referred to hospital for treatment.

The *de facto* complainant filed private complaint against the said police officials, when the same was referred to the police for investigation under Section 156(3) Cr.P.C., police registered the crime and filed final report and on final report without notice to the *de facto* complainant a protest was raised and pursuant to the protest petition referred supra, by examination of *de facto* complainant and four witnesses, marked Ex.P.1 to P.6, cognizance was not taken saying sanction is required and the *de facto* complainant when maintained Criminal Revision Petition No.93 of 2012 against the said order of the Magistrate, impugning the same, learned Sessions Judge by present impugned order dated 14.03.2014, observed that no sanction is required as police acceded their limits under the guise of investigation of a case on the so called report or at the instance of the revision 3rd respondent in relation to the alleged civil transaction. It is now

impugned from the grounds of revision vis-à-vis the oral submissions of the learned counsel for the accused persons that the learned Sessions Judge gravely erred in exonerating the factum of the alleged detention was between 18.02.2010 to 24.02.2010, whereas Advocate Commissioner appointed on search warrant and visited the police station and produced the said victim, if any, before the Court on 18.02.2010 itself and once such is the case, there is no question of custody with the police after 18.02.2010 and further the said Mallikarjuna was called to the police station in respect of a case under investigation and the alleged medical report saying injuries on 24.02.2010 cannot be co-related.

It is therefrom submissions that the order of the Sessions Judge saying it is outside purview of the discharge of duty of the police officials and no sanction is required under Section 197 Cr.P.C is unsustainable.

It is the submission of the learned counsel for the *de facto* complainant/second respondent to the revision, vis-à-vis the Public Prosecutor representing the state that the order of the lower revision Court is sustainable within the four walls of existing law in setting aside the erroneous order of the learned Magistrate and for this Court sitting in revision, there is nothing to refuse.

Heard. Perused the material available on record. If it is in relation to the investigation of a case, a person is called to the police station for interrogation or to ascertain the facts, which is within the part of official discharge of duties, whether the occurrence is during the police investigation while under police custody is a matter to be decided in the factual scenario supra. It is well settled from the expression of the Apex Court in **Prakash**

Singh Badal v State of Punjab¹ that necessity of sanction is required or not can be decided from stage to stage during trial. Thus, all the contentions of the accused persons available under law are left open to raise during trial including on sanction whether required or not to decide therefrom.

Having regard to the above, the Criminal Revision Case is partly allowed setting aside the order dated 14.03.2014 of the learned II Additional Sessions Judge, Kurnool by left open whether sanction is required or not for the alleged acts said to have been committed by the accused persons against the said Mallikarjuna, husband of the *de facto* complainant- K.Eramma to be decided during trial. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

02.01.2017
kvrn

Dr. B. SIVA SANKARA RAO, J

¹ 2001(1) SCC 1