

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.122 of 2017

JUDGMENT:

This Criminal Revision, under Sections 397 and 401 of Cr.P.C, is filed questioning the propriety and legality of the Order dt.24.11.2016 passed in CrI.M.P.No.1010 of 2016 in S.C.No.285 of 2015 passed by the Principal Sessions Judge, Karimnagar.

The Appellant herein filed a petition under Section 193 Cr.P.C. before Principal Sessions Judge, Karimnagar, for taking cognizance of the offence against Accused Nos. 2 to 9 under Sections 498-A, 304-B IPC and Section 4 of Dowry Prohibition Act and permit the petitioner to produce witnesses before the Court to adduce evidence in support of the case against accused Nos. 2 to 9.

It is contended by the learned counsel for the petitioner that the Sub Divisional Police Officer, Huzurabad, filed a final report under Section 173 of Cr.P.C. on 20.04.2015 implicating the husband of the deceased by name Namani Raju for the offences punishable under Sections 498-A and 304-B IPC and Section 4 of DP Act by deleting the names of other accused Nos.2 to 9, without taking into consideration the statements of Lws. 1 to 4 and 6, against whom the crime was registered on the basis of the complaint given by the petitioner, and the reason for deleting the names of Accused Nos. 2 to 9 is that their involvement is not established during investigation. After coming to know the Order dt. 15.06.2015 passed by the Additional Judicial Magistrate of First Class, Huzurabad, deleting the name of Accused Nos. 2 to 9, he filed a protest petition before the trial Court to take cognizance of the offence under Sections 302 and 304-B IPC against all the accused, but the same was returned informing that PRC No.14

of 2015 was committed to Sessions Court, Karimnagar. Thereupon, the petitioner filed a petition before Principal Sessions Judge, Karimnagar in CrI.M.P.No.1010 of 2016, which was dismissed by Order dt. 24.11.2016, and hence, he filed the present revision before this Court.

Upon hearing both the counsel, the Principal Sessions Judge, Karimnagar, passed the impugned Order dt.24.11.2016 dismissing the petition. But, the Order passed by the Sessions Judge is contrary to the law declared by the Apex Court in *Dharam Pal and Others v. State of Haryana and another*¹, wherein the Apex Court laid down certain guidelines to be followed by the Courts. According to principles laid down therein, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(2) of Cr.P.C and to proceed against the accused persons de hors the police report. The Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, he may proceed to try the said persons or if he is satisfied that a

¹ AIR 2013 SC 3018

case had been made out which was triable by the Court of Session, he must commit the case to the Court of Session to proceed further in the matter. Further, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same is found to be triable by the Sessions Court.

In view of the principle laid down in the above judgment, the Magistrate is vested with ample powers to disagree with the final report that may be filed by the police authorities under Section 173 (2) of Cr.P.C. and to proceed against the accused persons de hors the police report. It is the duty of the Magistrate to issue summons to the accused, on being satisfied that the case has been made out against the persons who are not arrayed as accused in the charge sheet, the Court may proceed to try or if the case is exclusively triable by the Court of Sessions, commit the case to the Sessions Division, but the impugned order was passed in clear violation of the principle laid down in ***Dharam Pal v. State of Haryana*** (referred supra). Therefore, the order is liable to be set aside on this sole ground.

In view of the law declared by the Apex Court and since the trial Court committed an error in dismissing the petition filed by the appellant herein, the present Criminal Revision case is liable to be allowed.

Accordingly, this Criminal Revision Case is allowed setting aside the Order dt.24.11.2016 passed in CrI.M.P.No.1010 of 2016 in S.C.No.285 of 2015 by the Principal Sessions Judge, Karimnagar. Consequently, CrI.M.P.No.1010 of 2016 is allowed permitting the petitioner herein to produce witnesses before the Court to adduce evidence in support of the case against respondents/Accused No.2 to 9 for taking cognizance against the said accused for the offences punishable under Sections 498-A, 304-B IPC and Section 4 of Dowry Prohibition Act.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.



M. SATYANARAYANA MURTHY, J

Date: 31-08-2017

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Crl.R.C. No.122 of 2017

Dt. 31-08-2017

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