

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2620 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed requesting to quash the proceedings in C.C.No.133 of 2016 on the file of Judicial Magistrate of First Class, Badvel, Y.S.R. Kadapa District.

2. Petitioners are arraigned as accused Nos.4 to 10 in the aforesaid Calendar Case. They alleged to have committed the offences punishable under Sections 498A, 323, 506 and 509 read with 34 I.P.C.

3. Heard Sri M. Karuna Sagar, learned counsel for the petitioners, and learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. There is no need to effect service of notice on respondent No.2 – *de facto* complainant, for the reason the order, dated 01.08.2016, taking cognizance of the offences by the learned Magistrate, itself is lacking every attribute and to say, it suffers from illegality.

5. Learned counsel for the petitioners would submit that the Investigating Officer, on completion of investigation, while filing final result/final report, under Section 173 of the Code, has specifically mentioned against the names of the petitioners, who are

shown as accused Nos.4 to 10, that, *prima facie*, the allegations constituting the offences levelled against them were not proved. But, when the charge sheet was filed, office of the learned Magistrate has put up an office note, which reads thus:

“Office Note

The SI of Police, Kalasapadu PS filed charge sheet in Cr.No.16/16 for the offences u/s. 498A, 323, 506, 509 r/w 34 IPC against A1 to A10.

1. 161 Cr.P.C. statements of LWs.1 to 5.
2. Rough sketch of scene of offence.
3. Wound certificate of LW.1.
4. Original F.I.R.
5. 41-A notice served to accused. A1 to A3 are released on station bail along with surety certificates. A4 to A10 are not charge sheeted by the police.

Hence, if your honour pleases the case may be taken on file against the accused and may be ordered for issuance of summons to the accused.

For orders.”

Thus, the office has placed the file before the learned Magistrate for orders.

6. Thereupon, the learned Magistrate has passed the following order:

“This case is taken on file and taken cognizance against A1 to A10 u/s. 498A, 323, 506, 509 R/W 34 IPC and registered as C.C.133/16. Issue s/s to A1 to A10. Call on 01.09.2016.”

7. It is, thus, patently clear that the learned Magistrate has not applied his mind at all while passing the aforesaid order taking cognizance of the offences referred to in the above against accused Nos.1 to 10. The order, dated 01.08.2016, since, suffers from want of application of mind, it is liable to be set aside, in view of the law declared by the Honourable Supreme Court in **M.N. Ojha v. Alok Kumar Srivastav**¹, wherein it is held in paragraph Nos.26 and 27 thus:

26. This Court in *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate* ((1998)5 SCC 749 ; 1998 SCC (Cri) 1400) held: (SCC p.760, para 28)

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully

¹ (2009) 9 SCC 682

scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

27. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants."

8. Hence, the order, dated 01.08.2016, is set aside and the matter is relegated to the learned Judicial Magistrate of First Class, Badvel, Y.S.R. Kadapa District, for examination of the material placed before him, including the charge sheet contents, and to act in accordance with law, while passing an order of taking cognizance of the offences alleged against the petitioners as well as accused Nos.1 to 3, who are not parties to the present Criminal Petition.

9. With the above direction, the present Criminal Petition is allowed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

April 03, 2017.
MD