

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1374 OF 2008

ORDER:

This Criminal Revision Case is filed, under Sections 397 and 401 of the Code of Criminal Procedure, assailing the order dated 18.07.2008, in C.F.R.No.5020 of 2007 on the file of the Additional Junior Civil Judge, Chilakaluripet.

2. Learned counsel for the petitioners strenuously submitted that the trial Court has not considered the vital aspect that after completion of the investigation, police filed final report referring Crime No.79 of 2007 of Nadendla Police Station as false. He further submitted that there is a discrepancy with regard to the date of incident in the complaint and that aspect was not considered by the Court below in right perspective, that itself indicates non-application of mind by it before taking cognizance of the offences against the petitioners. He further submitted that if the order of the Court below is allowed to stand, it amounts to miscarriage of justice.

3. *Per Contra*, the learned counsel for the second respondent strenuously submitted that as per the testimony of the witnesses the alleged incident took place on 13.08.2007. He further submitted that mere discrepancy in the complaint with regard to the date of incident by itself is not a valid ground to dismiss the complaint. Last but not least, he submitted the scope of this Court is very limited under Section 397 Cr.P.C.

4. The learned Additional Public Prosecutor representing the first respondent submitted that the trial Court has applied its judicial mind to the facts of the case and has taken cognizance of the offences against the petitioners; therefore, it is a fit case to dismiss the revision.

5. The point that arises for consideration, in this revision, is:

Whether the trial Court has committed any illegality, irregularity or impropriety while passing the impugned order, which warrants interference of this Court?

6. The facts leading to filing of the present revision are briefly as follows: The second respondent lodged a complaint before the Station House Officer, Nadendla Police Station, who in turn registered a case in Crime No.79 of 2007 against the petitioners for the offences punishable under Sections 323, 506, 509 and 354 read with 34 IPC. After completion of the investigation, the investigating agency referred the case as false. Feeling aggrieved by the final report of the investigation agency, the second respondent filed a private complaint vide C.F.R.No.5020 of 2007. The trial Court recorded the statements of five witnesses including the second respondent. After following due procedure, the trial Court has taken the cognizance of the offences against the petitioners under Sections 323, 506 and 509 read with 34 IPC. The trial Court has not taken the cognizance of offences punishable under Section 354 IPC.

7. Feeling aggrieved by the orders in C.F.R.No.5020 of 2007, the present revision is filed.

8. It is needless to say that at the time of taking of cognizance of the offence, the Court has to apply its judicial mind to the facts of the case on hand. If the Court fails to apply its judicial mind to the facts of the case and takes the cognizance of offence in a routine manner, then this Court can interfere, while exercising the jurisdiction under Section 397 IPC. In order to appreciate the rival contentions, this Court carefully perused the material available on record. As rightly pointed out by the learned counsel for the petitioners, in First Information Report in Crime No.79 of 2007, the second respondent has not mentioned the specific date of the alleged incident. As per the recitals of the First Information Report in Crime No.79 of 2007 the alleged incident took place prior to 23.08.2007. In page No.2 of the private complaint, the date and time of offence is mentioned as "13.08.2007 at about 8:00 P.M.," In page No.3 of the complaint, the date of alleged incident is mentioned as "23.08.2007". Basing on this discrepancy, the learned counsel for the petitioners strenuously submitted that the second respondent has not approached the Court by mentioning the specific date of the alleged incident. As rightly pointed out by the learned counsel for the petitioners, in the complaint, the date of alleged incident is mentioned as 23.08.2007. When there is a discrepancy in the complaint, the Court has to consider the sworn statements of

the witnesses. As per the sworn statements of the witnesses, the alleged incident had taken place on 13.08.2007 at about 8:00 P.M., and the same is corresponding to column No.1 of the complaint. The learned Magistrate considered the sworn statements of the witnesses and arrived at a conclusion that there is a *prima facie* material to proceed further against the petitioners. This itself indicates that the learned Magistrate has considered the material available on record in right perspective.

9. It is needless to say that this Court can interfere with the orders of the Court below while exercising the jurisdiction under Section 397 Cr.P.C., if there is any illegality or irregularity. The trial Court has considered all relevant aspects, in right perspective; therefore, I am unable to accede with the contention of the learned counsel for the petitioners that the trial Court has not considered the material within the legal parameters. The Court has to give due weight to the statements made by the witnesses before the Court. In the instant case, all the witnesses in one voice stated that the alleged incident has taken place on 13.08.2007 at about 8:00 P.M. Merely because there is some discrepancy in the body of the complaint, that itself is not a valid ground to set aside the orders passed by the Court below. As observed earlier, the learned Magistrate considered the material available on record in right perspective. A perusal of the record *prima facie* reveals the role played by the petitioners in the commission of the alleged offences.

I am fully agreeing with the findings recorded by the Court below. There is no illegality, irregularity or impropriety in the order of the Court below, which warrants interference of this Court. Viewed from legal or factual aspects, there are no grounds much less valid grounds to interfere with the impugned order.

10. Hence, the Criminal Revision Case is dismissed. The trial Court is hereby directed to dispose of the matter in accordance with law without being influenced with the observations, if any, made by this Court in this revision case. Consequently, Miscellaneous Petitions, if any pending in this revision shall stand closed.

Date:10.08.2017
INL

JUSTICE T.SUNIL CHOWDARY

