

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1845 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed questioning the propriety and legality of the order passed by the trial Court in marking First Information Report, dated 12.12.2011 as Ex.P.1.

2. The only objection raised by learned counsel for the petitioners-accused before the trial Court was that P.W.1 in his oral evidence admitted that the incident took place on 29.11.2011 at about 3:00 PM and on the same day P.W.1 and L.W.3 went to Roddam Police Station and presented a report to S.I of police, but, the S.I of police without registering crime, sent them to Government Hospital, Roddam for treatment. Their names were also recorded in the hospital register as outpatients and doctor gave injection for pain relief. P.W.1 admitted in his chief-examination at last but one para that he lodged a compliant on the date of incident itself i.e., on 29.11.2011 at about 3:00 PM to S.I of police, Roddam police station, but without registering the crime, the S.I of police sent him to hospital for treatment.

3. The report, which was lodged on the date of incident was not placed before the trial Court and in case if there is any report either written or oral and reduced into writing by the police, the report, dated 12.12.2011, marked as Ex.P.1, cannot be treated as FIR, at best it can be treated as statement recorded by police during investigation under Section 161 (2) Cr.P.C. As on date, no such report is placed on record by the Investigating Agency and the

basis for setting the criminal law into motion as Ex.P1, dated 12.12.2011, *prima facie*. But, the trial Court rejected the contention of learned counsel for the accused and marked the same as Ex.P.1 since the earlier report, 29.11.2011 at 3:00 PM was not brought on record.

4. The Scope of revision is limited. This Court while exercising the power under Section 397 Cr.P.C., cannot interfere with the orders passed by the Court below unless the order passed by the Court below is totally contrary to the law or without any material. But, in this case, there is an oral admission about lodging of complaint on 29.11.2011 i.e., immediately after the incident, but the trial Court did not accept the said contention.

5. Now, learned counsel for the petitioner requested this Court to delete Ex.P.1 treating the same as statement recorded under Section 161 (2) Cr.P.C., by the investigating agency. But, at this stage while exercising the power under Section 397 Cr.P.C., this Court cannot record such premature finding that Ex.P.1-report as a statement recorded under Section 161 (2) Cr.p.C. However, the trial Court is requested to decide whether Ex.P.1 is a statement recorded would fall within the ambit of Section 161 (2) Cr.P.C., in the absence of earlier report, dated 29.11.2011, and therefore, I am not inclined to interfere with the order. However, liberty is given to the petitioner to raise such objection during argument and marking of F.I.R. as Ex.P.1 is only subject to decision at the disposal and if the Court concludes that Ex.P.1 is not first complaint lodged with the police to set the criminal law into

motion, the trial Court is at liberty to reject the same as FIR and treat as statement recorded under Section 161 (2) Cr.P.C.

6. With the above direction, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M. SATYANARAYANA MURTHY, J

AUGUST 31, 2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 31.08.2017

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