

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3283 OF 2017

ORDER:

The present Criminal Petition is filed requesting to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), to quash the proceedings in C.C.No.373 of 2016 on the file of Additional Judicial Magistrate of First Class, Narasapuram, West Godavari District.

2. Petitioner herein is arraigned as accused No.3 in the aforesaid Calendar Case. He, along with other accused, alleged to have committed the offences punishable under Sections 143, 145, 147 and 148 read with 149, 324 and 506 (2) read with 34 I.P.C.

3. Heard Sri Polisetty Radha Krishna, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The main submission of the learned counsel for petitioner is, the name of petitioner, in fact, was deleted in the charge sheet showing against his name as "Not Charged". He has pointed out the charge sheet contents at page Nos.17 and 21 of the material papers, and in page No.21, in the concluding paragraph of the charge sheet, the Investigating Officer – Sub-Inspector of Police, Elamanchili Police Station, has clearly mentioned that accused Nos.1, 2, 4 to 15 and 17 to 21 are liable to be prosecuted under Sections 143, 145, 147

and 148 read with 149, 324 and 506 (2) read with 34 I.P.C. in Crime No.145 of 2015 of Elamanchili Police Station. Learned counsel has also subsequently filed the cognizance order, which shows that the learned Magistrate has taken cognizance against the petitioner also for the offences alleged.

5. A perusal of the said cognizance order would show that the office of the Court below has put up a note initially mentioning six points and then stated thus:

“your Honour may be issue Notice to the *de facto* complainant for deletion of A3 and A6.”

6. The learned Magistrate, thereafter, has taken cognizance and in taking cognizance, a seal was used, in which words “A1 to A21” and Sections of law and the date were written in ink, which reads thus:

“Case is taken on file. Cognizance has been taken against A1 to A21.

U/Sec. 143, 145, 147, 148, R/W 149 IPC.

.....Issue summons to the accused. Call on 10/11/16.”

7. Thus, it shows complete non-application of mind on the part of the learned Magistrate, even overlooking the note put up by the concerned staff.

8. Now, the question is whether such an order of taking cognizance can be maintained so far as the petitioner is concerned.

9. The answer should be invariably 'no'.

10. The next question is whether straightaway quashment of the proceedings in the Calendar Case can be ordered against the petitioner. Certainly not, for the reason, the learned Magistrate has to pass a reasoned order by looking into the charge sheet contents and examining whether there is any material against the petitioner herein and in case, he finds that there are no *prima facie* allegations at all, certainly, he can accept the charge sheet contents and the opinion of the Investigating Officer in not charging the petitioner. Therefore, the cognizance order passed by the learned Magistrate is liable to be set aside.

11. Hence, the present Criminal Petition is allowed and the cognizance order passed by the learned Additional Judicial Magistrate of First Class, Narasapuram, is hereby set aside directing the learned Magistrate to pass orders afresh in accordance with law and more particularly, following the law declared by the Honourable Supreme Court in **Priyanka Srivastava and another v. State of U.P. and others**¹. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

April 28, 2017.
MD

¹ (2015) 6 SCC 287