

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.3331 of 2017

ORDER :

Heard the learned counsel for the petitioners/ A.1, A.3 and A.4 in C.C.No.7 of 2017 pending on the file of the IV Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam for the offences punishable u/ sec.448,506 and 509 r/w 34 IPC, and also learned counsel for the 2nd respondent/defacto-complainant and the learned Public Prosecutor representing the 1st respondent-State and perused the grounds urged in the quash petition and the material on record.

The main contention of the learned counsel for the petitioners/ A.1, A.3 and A.4 is that their names no way find place either in the FIR or in the statements of the witnesses much less reflecting in the police final report for the learned Magistrate to take cognizance and cognizance order is *per se* unsustainable. The submission of the learned counsel for the 2nd respondent/ defacto-complainant is that Ashok Reddy is no other than Keerthi Dorababu which is alias name and the other two names as same as mentioned in the chargesheet as A.3 and A.4. Once such is the case, there is nothing to find fault with the cognizance order though that is not even reflected from the police final report from the investigation material of the statements of the witnesses but for if at all in seeking clarification by the learned Magistrate in mentioning in the chargesheet the names of the accused as to how without their reference from the investigation material. It was not done by the

learned Magistrate but taken cognizance mechanically thereby the same is liable to be set aside.

Having regard to the above and in the result, the Criminal Petition is disposed of by setting aside the cognizance taken by the learned Magistrate and send the final report back to the learned Magistrate to take fresh cognizance from the material if sufficient enough, else any clarification in the array of the names of the accused requires, in view of the power of the Court as per the expression of the Apex Court in Sakiri Vasu Vs. State of UP¹ for any further investigation by the police u/ sec.173(8) CrPC, to file any supplementary final report to take cognizance if any therefrom.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 12.10.2017
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¹ (2008) 2 SCC 409