

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.R.C. No.510 of 2016

ORDER:

Impugning the cognizance order passed by the learned Magistrate dated 25.01.2016 differing with the opinion of the final report of police under Section 173 Cr.P.C showing there is no material so far as accused Nos.2 to 8 and 10 to 12 in Crime No.29 of 2015 registered on 10.04.2015 against twelve accused, from the learned Magistrate having been observed notice served to the defacto complainant—LW.1, who is son of the two deceased persons having appeared to the notice on the referred report he has no means to engage an advocate to cause file a protest petition, hence to decide on merits and the learned Magistrate after hearing learned public prosecutor and from perusal of the material, from LWs.1 to 9 all in one voice taken cognizance including accused 2 to 8 and 10 to 12 in committing the case to the Court of Sessions in P.R.C. No.3 of 2016 against all the twelve accused for the offences punishable under Sections 147, 148, 447, 302 r/w 149 IPC, the present revision is filed.

2) The contentions in the grounds of revision vis-à-vis the oral submissions made by the petitioners/ accused Nos.2 to 8 and 10 to 12, impugning the deferred opinion with the police final report in taking cognizance, despite they stated no case, the learned Magistrate holding that there is a prima facie accusation for the purpose of cognizance by committing a grave error and should have seen the police final report at page Nos.4 and 5 that basing on the investigation and from the material available, accusation is made out against the accused Nos.1, 9 13 to 15, who have participated in the crime including from their call details

report connecting from two locations of their mobile operations tracked from the cell towers. So far as accused Nos.2 to 8, 10 to 12 are concerned, it is not established of their complicity and they are falsely implicated due to political ill feelings and other reasons, and should not be sent for trial saying that it is also a counter blast to the murder of one Smt.Venkata Sulochana wife of A1 in Crime No.91 of 2013 of Thundur P.S.

3) It is the submission made by the learned counsel for the petitioners that the trial Court should not have ignored these aspects when police final report is crystal clear of no accusation is made out and taking of cognizance is by non-application of mind in the impugned order. Learned counsel for the petitioners placed reliance on Five Judge Bench expression of the Apex Court in ***Dharampal and others vs State of Haryana and another***¹ which was decided by Constitution Bench on 18.07.2013 and ***Hardeep singh vs State of Punjab and others***² was decided by Co-equal five Judge Bench on 10.01.2014 to say a subsequent expression. In fact, in Dharampal (supra), the Apex Court referring to the catena on the scope of Section 190 and 193 Cr.P.C read with Sections 173, 200 to 204, 209 Cr.P.C apart from Section 319 Cr.P.C observed that Magistrate got absolute power in taking cognizance even differing with police final report when there is a material either on protest application by proceedings as a private procedure or even without that recourse from the police final report.

¹ (2014) 3 SCC 306

² (2014) 3 SCC 92

4) So far as Hardeep Singh (supra) concerned, what Dharampal (supra) referred on the scope of Section 319 Cr.P.C cannot came up for consideration as to what stage and what is the basis required for impleading third party as co-accused under Section 319 Cr.P.C. In that regard, it is held by explaining Dharmpal (supra) and so far as power of Magistrate to take cognizance differing with police opinion from the final report concerned in Hardeep Singh (supra) they did not differ from Dharampal (supra) practically from close perusal. Once such is the case, these two expressions are not helpful to the contention of the petitioners/ accused Nos.2 to 8 and 10 to 12 impugning the order of the learned Magistrate within his power of execution under Section 190 Cr.P.C of deferring with police final report filed under Section 173 Cr.P.C and in taking cognizance, that too, when the petitioners could not say from the material available and from the statements of LWs.1 to 9 that there is no any whisper against these petitioners for the police final report, so to mention it is not even the case that any of their statements are in favour of accused saying none of them or any of their complicity.

5) Having regard to the above, for this Court while sitting in revision, there is no illegality, impropriety or lack of justice in the impugned order passed on 25.01.2016 in P.R.C. No.3 of 2016 in Crime No.29 of 2015. However, it is made clear that taking of cognizance will not take away any right of the accused including in the course of hearing before framing charges from the committal proceedings after taking cognizance under Section 193 Cr.P.C by the learned Sessions Judge.

6) Accordingly and in the result, the revision is dismissed.

7) Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.18.01.2017
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