

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.12415 of 2010

ORDER :

The petitioners are A.1 to A.5 in Cr.No.60 of 2006 of I Town Police Station, Proddutur, registered for the offences punishable u/ sec.147,148,448 and 427 r/w 149 IPC, on the report of 2nd respondent to the Inspector of Police, on 06.05.2006 and the police after investigation filed referred final report in the Court of I Additional Judicial First Class Magistrate, Proddutur, as undetectable. On that the Learned Magistrate issued notice to the defacto-complainant calling for objections if any for the referred final report and after receipt of the same the defacto-complainant filed protest complaint U/ Sec.200CrPC, for the offences punishable u/ secs.147,148,307,427,448 and 506 R/w.140 IPC. On that after recording sworn statement of the complainant and one H.Chotu S/o Zilani Basha and perusing the referred final report, the learned Magistrate dismissed the protest petition by order, dt.14.07.2008 holding that there is no prima facie case against the accused persons.

Aggrieved by the same, the defacto-complainant preferred the revision vide CrI.R.P.No.62 of 2008 before the Principal Sessions Judge, Kadapa with the averments that the order of the trial Court is erroneous and unsustainable on the facts and law. At the stage of Sec.203 CrPC what is necessary to see is only whether there is prima facie material on record to proceed with the case but the learned Magistrate dealt with the case on merits and

scrutinised the evidence as if it was a full fledged trial and made observation that the witnesses gave conflicting evidence contradicting to each other and there is no corroboration etc., The proceedings of the Learned Magistrate are not regular to assess, scrutinise and appreciate the statements of the witnesses on oath. A.1 is prominent Congress leader and Chairman of Sri Agasteshwara Swamy Temple, Proddutur. He demolished the shop owned by S.Jaffar under the pretext of road widening scheme and the complaint of said S.Jaffar was also referred by the Police as undetectable colluding with the A.1. The Learned Magistrate should have proceeded further and could have taken the case on file and conducted trial of the case by giving opportunity to the accused to cross examine the witnesses on behalf of the prosecution or could have ordered investigation by superior police officer having jurisdiction.

The Learned Sessions Judge by order dt.8.9.2010 allowed the revision by setting aside the order of Learned Magistrate, dt.4.07.2008 passed in Cr.No.60 of 2006 by directing the learned Magistrate to take cognizance of the case for the offences U/ Secs.147,148,427,448 & 506 r/w.149 I.P.C against the A.1 to A.5 and to proceed in accordance with law, holding that it is settled law that at the time of considering the protest petition/ complaint, the contents of complaint and sworn statements of the defacto complainant and his witnesses are only shall be taken into consideration and to see whether there is prima-facie case to proceed against the accused or not. Therefore, the order of the

trial Court in dismissing the complaint and accepting the final report filed by the police is liable to be set aside.

Impugning said reversal order of the learned Sessions Judge in the revision, the petitioners/ A.1 to A.5 preferred this Criminal petition seeking to call for the records of the orders passed in revision dt.8.9.2010 and quash the same, with contentions that the defacto-complainant filed a complaint against them stating as committed an offence of rioting by trespassing into his STD Booth and damaged the articles etc. It is submitted that A.1 is the Chairman of Svalayam Dharma Kartha Mandali, Proddutur, and in the road widening programme some shops belongs to temple, in occupation of the tenants including the complainant, were demolished and in that regard the defacto-complainant only to settle the scores and to harass the petitioners, lodged the present complaint which was after thorough investigation by examining 17 witnesses, the police filed a final report stating that there is no case at all against the petitioners and even in the protest petition, the learned Magistrate after recording the sworn statement of the complainant and other witnesses and after appreciating the material available on the record came to prima facie conclusion that material available on record quite contradictory to sworn statement proves that no prima facie case was made out against the petitioners to take cognizance and dismissed the complaint u/ Sec.203 CrPC by order dated 14.7.2008. in the revision preferred by the complainant against the order of the learned Magistrate, dt.14.07.2008, the learned Sessions Judge, by order

dt.8.9.2010 allowed the revision by taking erroneous view of law and facts and proceeded on the premise that trial Court evaluated the evidence, without appreciating the fact of the learned Magistrate has rightly taken into account the contents of protest complaint and sworn statements of complainant and other witnesses and came to the conclusion that no case is prima facie made out to take cognizance of the alleged offences against the petitioners besides that without appreciating the fact that trial court made strict compliance of Sec.203 CrPC, therefrom the order of the learned Sessions judge, cannot sustain in the eye of law and continuation of criminal proceedings against the petitioners is nothing but abuse of process of law and accordingly liable to be quashed in the interest of justice.

The learned counsel for the petitioners/ A.1 to A.5 is simply taking time without compliance and without getting ready to argue the case. Heard the learned Public Prosecutor for the 1st respondent-State and also taken as heard the learned counsel for the petitioners. The 2nd respondent/ defacto-complainant to whom notice sent by registered post on 06.04.2016 by personal service to the address furnished in the complaint and proof of sending filed did not choose to appear. No doubt, proof of service required to be filed and it was not filed despite opportunities. Perused the material on record.

From the material on record, the police report registered as crime from which, the police investigated in detail and filed referred report for nothing to substantiate the sustainability of

accusation with reference to the report from several witnesses on behalf of the prosecution as part of investigation even were examined. The protest petition and taking cognizance therefrom then is not as a matter of course but for if at all from the protest explaining how the investigation is faulty or biased or untenable and what the investigating officer did not chose to do materially though required like any witnesses allegedly examined were not examined or not allegedly stated were not stated or even they stated differently that was not recorded. As it is not a private complaint for the first time but for the protest against the referred report and that is to be considered definitely with reference to the earlier investigation material and not simply by referring to the sworn statement recorded from the protest. Thereby once this requires to be followed to make out a prima facie case from issuing process against all the accused is a serious thing and not a matter of Course in curtailing the personal liberty of the accused in a criminal case and once that is prima facie referred and dismissed the protest petition by the learned Magistrate ignoring all these and in observing simply of learned Magistrate should have taken cognizance without scrutiny by sitting in revision against the said order of the learned Magistrate by the Sessions Judge is unsustainable.

With these observations, suffice to say the order of the learned Magistrate holds good.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceeding in Cr.No.60 of 2006 of I Town

Police Station, Proddutur, against the petitioners/ A.1 to A.5 and they are acquitted and their bail bonds stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:01.11.2017
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