

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2198 of 2017

ORDER:

Learned senior counsel appearing for the 2nd respondent contended that no delay condonation petition was filed, since the revision case is filed after lapse of 22 days. The said delay can be condoned on oral application. Therefore, the delay in filing the revision case is condoned on oral application since the proceedings were decided by this Court in Crl.P.No.4088 of 2017 and the present revision case is filed immediately after disposal of the said criminal petition.

2. This revision case is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the docket order, dated 06.04.2017 in Crime No.58 of 2015 passed by the Additional Judicial Magistrate of First Class, Kandukur issuing process to A2 to A5 on payment of process fee.

3. Respondent No.2 lodged a complaint against the petitioners/A4 and A5 and other accused, but the police after completion of investigation filed a final report under Section 173 Cr.P.C before the Magistrate on 16.03.2016 and thereafter, a private complaint is filed by the 2nd respondent alleging that the investigating agency did not investigate the matter properly and deleted the names of the petitioners/A4 and A5 from the array of the accused and therefore, requested the Magistrate to enquire into the allegations made against the petitioners and take cognizance against them for the offences punishable under various provisions of IPC. While the private complaint filed by the 2nd respondent is pending before the Judicial Magistrate by way of protest petition

under Sections 173(8) and 201 Cr.P.C., the docket order dated 06.04.2017 came to be passed by the Magistrate taking cognizance against the petitioners/A4 and A5 for the offences punishable under Sections 498-A, 302, 201 read with 109 IPC and issued process against them by exercising power under Sections 202 to 204 Cr.P.C.

4. Learned counsel for the petitioners during hearing contended that the basis for taking cognizance against these petitioners is either under protest petition or a private complaint and without deciding the protest petition or complaint, the Court below cannot pass such order. Learned counsel reiterated the contentions raised in the revision case, while drawing the attention of this Court to the order dated 14.07.2017 in CrI.P.No.4088 of 2017 dismissing the petition as withdrawn granting liberty to avail remedies under law. When the criminal petition was dismissed permitting to avail remedies, the order passed by the Court below, keeping the protest petition or complaint is a clear illegality and prayed to set aside the order dated 06.04.2017 issuing necessary direction to the Court below.

5. Whereas, learned senior counsel would contend that when a private complaint/protest petition is filed, the Court can issue process and relied on a judgment of the Apex Court in **Nupur Talwar v Central Bureau of Investigation and another**¹ and prayed to dismiss the revision.

6. Undoubtedly, the protest petition/private complaint filed under Sections 173(8) and 201 Cr.P.C. is pending on the date of

¹ AIR 2012 SC 1921

impugned order, which is subject matter of revision and the 2nd respondent herein requested the Court to take cognizance against the petitioners/A4 and A5 herein and issue summons or otherwise direct the 1st respondent for further investigation by CBCID or any higher authority other than the SHO, Ponnaluru Police Station making serious allegations against these petitioners. Undoubtedly, the protest petition/private complaint is pending by the date of order and when the Court below intend to proceed against these petitioners based on such private complaint/protest petition, the Court below would have recorded the statement of witnesses by following procedure under Sections 200 to 204 Cr.P.C. Instead of following such procedure, keeping the protest petition/private complaint pending, passed the impugned order. But in the impugned order, there is a reference about the protest petition in second line, as if the Court below perused the complaint/protest petition, sworn statement of witnesses and concluded that these petitioners are also *prima facie* participated in the offence. When the protest petition/private complaint is pending, coming to such conclusion based on the allegations made in the protest petition/private complaint is an illegality and even the judgment of the Apex Court relied on by the learned counsel for the respondent is of no consequence since the Apex Court discussed about the powers of the Court to issue process and the revisional Court cannot go into the question whether the reasons given by Magistrate were good or bad, sufficient or insufficient and it can only see whether there was material before Magistrate to take a view that there was sufficient ground for issuing process. Thus,

the law declared by the Apex Court has no consequence. But here the Magistrate took cognizance and issued process by exercising power under Section 204 Cr.P.C. without passing any order in the protest petition/private complaint, but reference is made in the order regarding perusal of private complaint/protest petition and statement of witnesses recorded by the Court. The procedure adopted by the Court is an irregularity and when the Court passed such an order illegally, this Court while exercising power under Sections 397 and 401 Cr.P.C can set aside the same.

7. Accordingly, the Criminal Revision Case is disposed of setting aside the docket order, dated 06.04.2017 in Crime No.58 of 2015 passed by the Additional Judicial Magistrate of First Class, Kandukur directing the Magistrate to proceed in accordance with law after necessary enquiry.

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

M. SATYANARAYANA MURTHY J

Date: 24.08.2017
kvrn