

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.3630 of 2017

ORDER :

Heard the learned counsel for the petitioners who are the three complainants of the private P.R.C.No.7 of 2016 on the file of the Addl.Judl.Magistrate of First Class of Chilakaluripet and also the learned Public Prosecutor representing the respondent-State.

It is impugning the notice of the learned Magistrate dated 02.02.2017 in the said private P.R.C, the quash petition is filed. The factual background necessary to refer in nutshell are that on the report of the defacto-complainant, the police registered crime vide Cr.No.99 of 2014 for the offences punishable u/sec.147,148,323,324 and 435 r/w 149 IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short, 'the Act').

The police after investigation, with a conclusion of the ingredients of Section 3(1)(x) of the Act, penal provision u/sec.3 have no application to the facts appears sought permission of the Superintendent of Police to file final report in whatever form it could be.

The defacto-complainant supra filed a private complaint by mentioning Sections 147,148, 324, 326, 354, 307 and 435 r/w Sec.149IPC and Section 3(1)(x) and 3(2) (IV) of the Act, and the learned Magistrate taken cognizance and allotted a private PRC No.7 of 2016 for the offences u/sec.147,148,324,326,354,307 and 435 r/w 149 and Section 3(i)(x) and 3(2) (IV) of the Act against the A.1 to

A.6,8,9,11,12,15 to 17 and ordered to issue summons to said accused vide order in CrI.M.P.No.1090 of 2015 of the committal Magistrate dated 06.04.2016. It is with reference to P.Ws.1 to 5 and statements viz; Exs.P.1 to P.18 and it is after committal of the case as a Private PRC supra from the cognizance taken from the learned Magistrate for the offences supra u/sec.190 CrPC r/w Sections 200 to 202 and 204 and u/sec.209 Cr.P.C., the case reached to the file of the learned Sessions Judge. Needless to say at this stage as per the Constitution Bench expression of the Apex Court in **Dharam Pal Vs. State of Haryana**¹, once the Magistrate has taken cognizance u/sec.190CrPC even a case committed to the Court of Sessions, the question of second cognizance by invoking Section 193CrPC by the Court of Sessions does not arise. The Sessions Judge has to invariably allot Sessions Case number and therefrom the prosecution has to open the case as contemplated by Section 226 CrPC and if at all any of the accused to be discharged can do so u/sec.227 CrPC, else to frame a charge as contemplated by Section 228CrPC. Needless to say as per the 3 JB of the Apex Court **State of Orissa vs. Debendra Nath Padhi**², the framing of charge must be based on the prosecution material and the accused is also not entitled much less to summon any witness or to produce any documents invoking Section 91 CrPC to place any material which is foreign to the material placed by the prosecution/ complainant as the case may be. However, the same is

¹(2014) 3 SCC 306

² (2005) 1 SCC 568

clarified by subsequent Division Bench expression of the Apex Court in **Rukmini Narvekar Vs. Vijaya Satardekar**³ that it is not an absolute rule and in an exceptional case, even the trial Court while framing a charge can frame either from the prosecution or accused of any impeccable and cogent material to consider for the necessity of any framing of charge and to frame an appropriate charge.

In view of the above legal position, the issuing of the summons by the learned Judicial Magistrate supra pursuant to the very unsustainable direction of the Court of Sessions to produce any caste certificates of any persons even to number the Session Case or to conduct any enquiry prior to the enquiry contemplated by Section 226 to 228CrPC is thereby unsustainable and set aside with a direction to the learned Court of Sessions to follow the above observations and the expressions of the Constitution Bench in **Dharampal** supra and if necessary if at all it is an exceptional case to consider the expression of **Rukmini Narvekar** supra and can ask for the purpose of framing or non-framing of a charge any caste certificate of the complainant or the accused, as the case may be.

With these observations, the Criminal petition is disposed of. Needless to say the Magistrate shall send back by virtue of this order to the Court of Sessions without any lapse of time for the Sessions Court to proceed further as supra.

³ (2008) 14 SCC 1

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:29.08.2017
vvr

Dr. B.SIVA SANKARA RAO J,

