

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1961 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.') is filed by the petitioners/A.1 to A.3 assailing the docket order, dated 05.05.2017, of the learned Junior Civil Judge, Mydukur, passed in CrI.M.P.No.1929 of 2016 in Crime No.428 of 2015 of Mydukur Police Station.

2. I have heard the submissions of Sri C.M.R.Velu, learned counsel appearing for the petitioners/A.1 to A.3 and of learned Public Prosecutor, appearing for the State of Andhra Pradesh.

3. As this Court is of the considered view that this revision can be disposed of at the admission stage, no notice is necessary to the 2nd respondent.

4. I have perused the material record.

5. The order, dated 05.05.2017, by which the petitioners/ A.1 to A.3 are aggrieved of, reads as follows:

“Complainant present. Perused the record, there is prima facie case made out against the accused No.1 to 3. Hence case is taken on file U/Sec.232, 354, 506, 509 r/w 34 IPC. Issue summons to A1 to A3 by 5.7.2017.”

6. A plain reading of the above order shows that it is a cryptic order bereft of any reasons. The order does not even specifically indicate as to whether or not the learned Magistrate perused the complaint, sworn affidavit, if any, filed by the complainant and/or other material, if any, placed on record. The order also does not show if any inquiry was

conducted and statements of the complainant or any of his witnesses were recorded or not. It is, therefore, urged that the said order is unsustainable and is liable to be set aside in view of the following ratio in the decision of the Supreme Court in **Mehmood Ul Rehman and Ors. Vs. Respondent: Khazir Mohammad Tunda and Ors.** [AIR 2015 SC 2195].

“The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Limited (supra)*, to set in motion the process of criminal law against a person is a serious matter.

In **Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors.** [(1998) 5 SCC 749], the Supreme Court has held as follows:

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

7. Having regard to the facts, submissions and the legal position obtaining, this Court finds that the impugned order, which is unsustainable can be set aside and that the matter can be to the trial Court for passing an appropriate order by following the precedential guidance in the decisions cited supra.

8. In the result, the Criminal Revision Case is allowed and the docket order, dated 05.05.2017, in CrI.M.P.No.1929 of 2016 in Crime No.428 of 2015 of Mydukur Police Station passed by the learned Junior Civil Judge, Mydukur is set aside and the matter is remanded to the trial Court for passing an appropriate speaking order having regard to the facts, procedure and law.

Miscellaneous petitions, if any, pending this revision case shall stand closed.

JULY 14, 2016
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M.SEETHARAMA MURTI, J



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DATE: 14.07.2016

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