

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1178 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 21.06.2012 in CrI.M.P.No.1015 of 2010 in C.C.No.329 of 2007 on the file of the Judl. Magistrate of I Class, Kamareddy, wherein and whereby the petition filed under Section 239 Cr.P.C., for discharge was dismissed.

2. Learned counsel for the petitioners submitted that the trial Court has not rightly considered the scope of Section 239 Cr.P.C. and dismissed the petition on erroneous grounds. He further submitted that the trial Court failed to consider that after investigation, police filed the report under Section 173 Cr.P.C.; therefore, the case is based on police report, but not on a private complaint.

3. Per contra, learned Additional Public Prosecutor representing the State submitted that the petition filed under Section 239 Cr.P.C. is not maintainable.

4. A perusal of the record reveals that the petitioners are facing trial in C.C. for the offence punishable under Section 498-A r/w 109 IPC. While pending the case, the petitioners filed the above petition under Section 239 Cr.P.C. for discharge. The trial Court dismissed the said petition on the sole ground that the petition under Section 239 Cr.P.C. is not maintainable.

5. In order to appreciate the contention of the learned counsel for the petitioners, it not out of place to extract herein Section 239 Cr.P.C., which reads thus:

“If, upon considering the police report and the documents sent with it under Section 173 and making such

examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

A perusal of Section 239 of Cr.P.C., at a glance, clearly demonstrates that if the case is based on a Police report, the accused can file application under Section 239 of Cr.P.C., for discharge. In the instant case, the *de facto* complainant filed the complaint under Section 200 of Cr.P.C., on the file of the Court of Judicial Magistrate of First Class, Kamareddy against the petitioners herein and the same was referred to the Station House Officer, Kamareddy Police Station, who in turn registered a case in Crime No.137 of 2007 under Section 498-A read with 109 of IPC. After completion of the investigation, the Investigating Officer laid charge sheet against the petitioners for the offence punishable under Section 498-A read with 109 of IPC. The learned Judicial Magistrate of First Class, Kamareddy, registered the charge sheet as C.C.No.329 of 2007. A perusal of the record clearly reveals that the trial Court took cognizance of offence basing on the charge sheet filed by the Police. The record further reveals that the trial Court has not taken the cognizance of offence against the petitioners as contemplated under Sections 202 to 204 of Cr.P.C., but under Section 173(2) of Cr.P.C. In such circumstances, the petitioners are entitled to file application under Section 239 of Cr.P.C. The trial Court without considering the relevant provision of the Cr.P.C., simply dismissed the petition as if the same application is not maintainable under law.

6. Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the revision.

7. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 21.06.2012 in CrI.M.P.No.1015 of 2010 in C.C.No.329 of 2007 on the file of the Judl. Magistrate of I Class, Kamareddy. However, the matter is remanded to the trial Court with a direction to dispose of the petition in accordance with law. Miscellaneous petitions, if any, pending in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 26-10-2017.

Hsd

