

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7433 of 2017

ORDER:

Heard the counsel for the petitioners/A1 and A13 of C.C.No.26 of 2015 on the file of the I Additional Junior Civil Judge, Narasaraopet, Guntur District and also the Public Prosecutor representing the State before ordering notice to the 1st respondent-*de facto* complainant of Crime No.163 of 2013 of Narsaraopet Rural Police Station and in the case the learned Magistrate from the police final report taken cognizance for the offences punishable under Sections 147, 148, 56, 324 r/w 149 IPC.

2. All the accused, it appears, were originally summoned. In the course of before charges and while framing charges, A1 and A13 not referred but A2 to A12. That mistake is noticed during trial in progress. A perusal of the charges framed also speak specifically A1 to A24. Needless to say that there is a settled latin maxim, "*Actus Curiae Neminem Gravabit*" to mean, "An act of the court shall prejudice no one unless sanctioned by law and under the principle". The law is fairly settled that the mistake of the court can be rectified at any stage. There shall not be any specific provision as inherent power inheres any other court from its very constitution to rectify its mistakes crept in, which is by impugned order, dated 18.07.2017, the learned Magistrate based the order from the office note as follows:

“In this case, the investigating officer filed charge sheet against A2 to A12 and A14 to A24 by deleting the names of A1 and A13, but this court taken on file the case against A1 to A24 whereas due to over site summons to A1 and A13 was not issued and remaining accused were examined u/s.239 Cr.P.C. and LW1 examined as PW1 And his cross examination was deferred at request. At this stage this Court noticed that summons to the A1 and A13 was not issued. Where as PW1 in his chief examination deposed evidence against A1 and A13 also. Therefore, as per sec.319 Cr.P.C., the court can summon any person an offence, it appears from the evidence, hence issue summons to A1 and A13 call on 1-8-2017.”

3. Same is now impugned saying the Court has no power and their not naming specifically tantamounts to Discharge. As rightly pointed by the learned Public Prosecutor, there is no need of any specific order discharging them from accusation against them, is ground less. There is no material to frame charge unless there is a specific order of Discharge. Discharge cannot be inferred even to accept such a contention of the investigation for the petitioner.

4. No doubt, Section 319 Cr.P.C. has no application for not a case of totally new accused to the FIR, cognizance order, as they are there in the FIR, police-final report, and cognizance order. Once such is the case, Section 216 Cr.P.C. enables the Court as per the settled law of the power to alter a charge till pronouncement of Judgment and the alteration of charge includes deletion or addition and, as such, the names originally mistakenly omitted can be added, however, by hearing with opportunity to the petitioner by trial court.

With these observations, the Criminal Petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

September 4, 2017
LMV

