

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1804 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the Code') requesting to quash the Docket Order, dated 22.2.2017, passed in C.C. No.714 of 2014 on the file of XXI-Metropolitan Magistrate, Cyberabad at Medchal, whereby and whereunder the learned Magistrate accepted the Memo filed by the Assistant Public Prosecutor, bringing it to his notice that the victim girl, L.W.2 – Kum. P. Megna – has been a minor and there is sexual assault, which attracts provisions of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POSCO Act, 2012') and the offences under the said Act are triable by Specially Designated Court and, therefore, records that his Court has no jurisdiction to try the case against the accused and, therefore, committed the case under Section 323 of the Code to the Specially Designated Court, R.R. District, against the petitioner/accused for the offence punishable under Section 354-A (1) (i) of IPC and Section 7 read with Section 8 of POSCO Act, 2012.

2. Learned counsel for the petitioner would submit that when a notice was issued on the said memo by the Court, a detailed counter was filed stating that the allegations do not constitute any such offence under the said Act and when charges were already framed and coming up for trial, filing of such a memo is not the abuse of process

of Court and requests to set aside the order. That has been the defence taken before the Court below.

3. Learned Additional Public Prosecutor for the State of Telangana would support the order passed by the Court below under challenge.

4. The short question that falls for consideration is, whether the learned Magistrate is competent to exercise jurisdiction in committing C.C. No.714 of 2014 on his file to the Specially Designated Court, R.R. District, basing on the memo filed by the learned Assistant Public Prosecutor.

5. Perused the order of the Court below.

6. The learned Magistrate has quoted the provisions of Section 323 of Cr.P.C., and when it was brought to the notice of the learned Magistrate that the victim is a minor girl, who, has sexually assaulted, certainly, nothing deters him from exercising the power vested in the Court to commit the case.

7. Section 323 of Cr.P.C. envisages that if it appears to the Magistrate at any stage of the proceedings before signing of judgment, that the case is one which ought to be tried by the Court of Sessions, he shall commit it to the concerned Court.

8. When the provisions of Section 323 of the Code mandates as such, certainly, the Magistrate cannot continue the trial even if the

charges are framed, and what has been done by the learned Magistrate cannot be faulted.

9. Therefore, there is no merit in the Criminal Petition, and, accordingly, the same is dismissed.

Consequently, miscellaneous petitions if any pending in the criminal petition shall stand closed.

A.SHANKAR NARAYANA

Dt.15.03.2017
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