

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1052 OF 2017

ORDER:

The accused persons A6, A7 and A11 of P.R.C.No.26 of 2016, on the file of Additional Judicial Magistrate of I Class, Piler, for the offences punishable under Sections 147, 148, 341, 324 & 307 r/w 149 IPC and Section 3(i)(x) of SC & ST (POA) Act, 1989, filed the present revision, impugning the cognizance taken by the learned committal Magistrate for the offences supra, despite police final referred report in Crime No.02 of 2014 of Piler, in taking cognizance from the protest application of the *de facto* complainant in Crl.M.P.No.766 of 2016, dated 17.10.2016.

2. The contentions in the grounds of revision, impugning the cognizance from the facts supra by the said petitioners/accused supra, are that the impugned cognizance order on the protest application for the offences taken cognizance by the learned Magistrate is unsustainable, with no material on record, in ignorance of the inconsistencies between the sworn statements after the protest petition filed recorded to the police final report investigation material containing their statements during investigation and when police rightly filed the final report and learned Magistrate rightly accepted the same, later in taking cognizance with no

basis including on protest and said cognizance and issuing NBWs straight away instead of summons is also baseless and unsustainable, hence to set aside.

3. Even notice ordered to the *de facto* complainant as revision 2nd respondent and even served, failed to attend, hence taken as heard and also heard the 1st respondent to the revision - the State, represented by learned Public Prosecutor and perused the material on record.

4. The FIR from the report of the *de facto* complainant in setting the law in motion for the alleged occurrence dated 02.01.2014 of the crime registered on same day, within two hours after the alleged occurrence as crime No.02 of 2014 for the offences supra, mentioning eleven accused by the *de facto* complainant is with the contents that he is S.C. - Mala by caste of Maramreddygari **Palle** hamlet of Yerraguttapalli Village, Piler Mandal of Chittoor District. That on that day evening at about 04.00 pm, when he and his wife were at field, the cattle of their villagers Sriramulu Raju etc., eaten their standing crop and damaged and there from, when his wife questioned as to why they did not tie their cattle and left to damage the crop. Said Sriramulu Raju and the others besides him by name Sahadeva Raju, Siddulu Raju, Amarnath Raju, Samba Naidu, abused his wife saying there is no loss of money of her father and demeaned her and on hearing it, his son Karunakar went there and questioned

them for demeaning her. Then, those persons abused his son as 'Endira Maala Naa Kodaka Maaku Cheppedi', what to say by him being an S.C., by caste and with sticks on their hands bet said Karunakara on his head and caused bleeding injury and his other two sons Chiranjeevi and Sahadeva and also his wife taken Karunakara to Piler hospital and after treatment and brought back to him. They came to the police station in reporting the same and in the transit, while they were coming to police station, started at about 07.00 p.m. from their house, Sriramulu Raju, Sahadeva Raju, Siddala Raju, Amarnath Raju, Samba Naidu, Venkateswara Raju, Narendra Reddy, Rajendra Reddy, Mohan Naidu, Deva Raju, Adikesavulu, together obstructed their way by questioning their attempt to go to police station and report by threatening not to enter the village and armed with sticks and knives attacked and bet and he sustained bleeding injury to his right palm and also contusive injuries and Mallikarjuna sustained injury on his shoulder and Ashok sustained scratch on his right hand, Chiranjeevi sustained injury to his forehead contusive injury and they escaped somehow and by securing a private vehicle came to Piler Government Hospital and while undergoing treatment, police came and recorded their statement, hence to take action.

5. The police in the course of investigation from the said report registered as a crime supra, recorded the statement of

de facto complainant Venkata Ramaiah, Karunakar - L.W.2, Mallikarjuna - L.W.3, Chiranjeevi - L.W.4, Ashok - L.W.5, Savendra - L.W.6 and Nagamma - L.W.7.

6. The police final report, from said statements of witnesses, show that there are ill feelings between *de facto* complainant and accused groups from the panchayat elections and *de facto* complainant belongs to YSRCP group and accused persons belong to Congress Party and the dispute outcome is from cattle of accused persons entered the field of the *de facto* complainant and caused damage to the standing crop. When questioned by L.W.5, wife of *de facto* complainant - L.W.1, they formed unlawful assembly and abused her and when intervened, her son - L.W.2 and bet by insulted on caste and it shows from the statements of L.Ws.2 to 10 recorded during investigation. There is nothing to disclose presence and participation of Arava Venkateswara Raju, Balam Narendra Reddy and Gorrepeti Kesava - A6, A7 and A11, even figured in FIR and thereby, their names are deleted from taking cognizance for any offence for no offence made out and final report filed against other eight accused among the eleven persons of FIR and the Medical Officers, who examined, stated the injuries are very simple and caused by blunt objects.

7. The protest petition averments of the *de facto* complainant before the learned Magistrate to the extent of

discharge of the A6, A7 and A11 is that the police by perfunctory unfair investigation discharged them though their names are in the FIR and there are specific roles of them, hence the protest. It is therefrom the sworn statements of Karunakar, who raised the protest as P.W.1 and Mallikarjuna as P.W.2, recorded by the Magistrate in taking cognizance.

8. In fact as held by this Court in ***Sun Pharmsueticals Limited, Mumbai Vs. State of Telangana***¹ referred to the Constitution Bench expression of the Apex Court of 2014 in ***Dharma Pal and others Vs. State of Haryana***, that whether any cognizance from the protest taken by the Magistrate by following the procedure under Sections 200 to 204 r/w.190 Cr.P.C., cannot be as if outcome of a first private complaint procedure, but for also while considering the protest with reference to the sworn statements only by consideration of the police referred report material to the relevant extent concerned therefrom also in arriving a conclusion.

9. In the sworn statements of the two persons, they did not state what they stated before the police during investigation is how not correct but for introducing a different version. Once such is the case, how far the impugned order of the learned Magistrate is correct, only to be considered therefrom. The impugned order of the learned magistrate, though a detailed

¹ 2016 (2) ALD (CrI) 165

one, no way speaks any reference to the police investigation material, but for simply relying upon the sworn statements given on the protest petition and thereby same is unsustainable, as it is the duty of the learned Magistrate to apply judicial mind only with reference to the earlier investigation material along with the protest raised and the sworn statement, if at all to explain the earlier statements so to give and not to introduce a totally different version without explaining the earlier statements/versions. Thereby the impugned cognizance order of the learned magistrate is unsustainable and the same is set aside and remanded back to the learned Magistrate to consider afresh with reference to the observations supra, after fresh notice and hearing.

10. Accordingly and with the above observations, the criminal revision case is allowed to that extent. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO, J

26.04.2017
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