

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2472 of 2015

ORDER:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the common order dated 16.10.2015 passed in charge sheet in Crime No.385 of 2014 and C.F.No.2199 of 2015 in Cr.No.2199 of 2015 in Crime No.385 of 2014 of Tadipatri Urban Police Station, by the Judicial Magistrate of First Class, Tadipatri.

The Judicial Magistrate of First Class, Tadipatri passed an order clubbing private complaint and police report filed for the offence punishable under Sections 147, 148, 302 read with 149 and Section 120 – B of Indian Penal Code (for short "I.P.C."). It is the case of the defacto complainant that all the accused Nos.1 to 15 participated in the commission of offence punishable under Sections 147, 148, 302 read with 149 and Section 120-B of I.P.C. But police after investigation filed charge sheet against accused Nos.1 to 8 only deleting the names of other accused. Thereupon, defacto complainant filed protest petition under Section 200 Cr.P.C., but without recording any statements of the witnesses in the protest petition, the Court took cognizance of the case against the persons, who are not arrayed as accused having found that there is material to proceed against them for the offences

referred above and issued N.B.W. against the petitioners herein.

During hearing learned counsel for the petitioners contended that passing of impugned order clubbing private complaint and police report exercising power under Section 210 (2) of Cr.P.C. even before recording statements of witnesses in protest petition is illegal, even otherwise if Magistrate satisfies that there is material to proceed against other persons, who are not arrayed as accused certain procedure is contemplated in the Code i.e. issue process or summons and record satisfaction about the material available to proceed against the persons, who are not arrayed as accused in the police report and relied on a judgment of Apex Court rendered in “***Dharam Pal v. State of Haryana***¹”

Learned Public Prosecutor for State of Andhra Pradesh fairly conceded that the procedure adopted by the trial Court in clubbing both private complaint and police report filed under Section 173 of Cr.P.C. without recording the statements of the witnesses on protest petition is illegal to some extent while contending that the Magistrate is competent to look into the material produced before him and if he finds that there is material to proceed against other persons who are not arrayed as accused, the Magistrate can take cognizance against other persons who are not arrayed as accused and he is not bound by the charge sheet filed by the

¹ (2014) 3 SCC 306

police and placed reliance on “**Dharam Pal v. State of Haryana**” (referred supra)

In view of undisputed question of fact, passing of common order clubbing both private complaint and police report without recording statements of witnesses in the protest petition is an illegality committed by the Magistrate. Even otherwise, though the Magistrate is competent to verify the material to proceed against the other accused, in **Dharam Pal v. State of Haryana** (referred supra) the Apex Court laid down certain guidelines to be followed by the Courts. According to principles laid down therein, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(2) of Cr.P.C and to proceed against the accused persons de hors the police report. The Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, he may proceed to try the said persons or if he is satisfied that a case had been made out which was triable by the Court of Session, he must commit

the case to the Court of Session to proceed further in the matter. Further, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same is found to be triable by the Sessions Court.

In view of the principle laid down in the above judgment, the Magistrate is vested with ample powers to disagree with the final report that may be filed by the police authorities under Section 173 (2) of Cr.P.C. and to proceed against the accused persons de hors the police report. It is the duty of the Magistrate to issue summons to the accused, on being satisfied that the case has been made out against the persons who are not arrayed as accused in the charge sheet, the Court may proceed to try or if the case is exclusively triable by the Court of Sessions, commit the case to the Sessions Division, but the impugned order was passed in clear violation of the principle laid down in ***Dharam Pal v. State of Haryana*** (referred supra). Therefore, the order is liable to be set aside on this sole ground.

Learned counsel for the petitioners also contended that issuance of N.B.W. directly against the persons who are not arrayed as accused i.e. petitioners herein is an illegality, but when the order itself is set aside, the Court need not record any finding about the irregularity in issuing N.B.W. instead of issuing summons.

In view of my foregoing discussion, the order passed by the Magistrate is set aside while directing the Magistrate to follow the guidelines formulated in ***Dharam Pal v. State of Haryana*** (referred supra). The Magistrate is also bound to enquire into the protest petition and thereafter take cognizance of the offence and proceed further in accordance with Section 210 (2) of Cr.P.C. if he/she satisfied that a case is made out against the persons, who are not arrayed as accused in the police report.

In the result, the criminal revision case is allowed setting aside the order dated 16.10.2015 passed in charge sheet in Crime No.385 of 2014 and C.F.No.2199 of 2015 in Cr.No.2199 of 2015 in Crime No.385 of 2014 of Tadipatri Urban Police Station, by the Judicial Magistrate of First Class, Tadipatri and remanded the matter to the Judicial Magistrate of First Class, Tadipatri to follow the procedure contemplated under Sections 200 to 204 Cr.P.C. and guidelines formulated in “***Dharam Pal v. State of Haryana***” (referred supra) and decide the matter afresh in accordance with law as expeditiously as possible.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.08.2017
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