

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3155 of 2017

ORDER:

Heard Sri R. Siva Sai Swaroop, learned counsel for the revision petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

The submission of the learned counsel for the revision petitioner has been that while taking cognizance of offence under Section 307 of the Indian Penal Code by the IV Additional Chief Metropolitan Magistrate Court, Vizakhapatnam, in PRC.No.17 of 2017, the learned Magistrate just filled in the blanks of a seal put under the office note and, thus, it *ex facie* shows that there is no mind application, which ought not to have been done in view of the well settled legal preposition laid down by the Honourable Apex Court. As regards the maintainability, the learned counsel placed reliance on a decision of the High Court of Patna in **Kishore Kunal v. State of Bihar**¹, wherein it was held that the revision application is maintainable against order taking cognizance and consequential order issuing summons.

The photostat copy of the order under challenge and the neatly typed copy of the same are filed in the material papers. A perusal of the same would show that below the office note, the learned Magistrate filled in the blanks of a seal by mentioning the offence

¹ 2008 LawSuit (Pat) 130

under Section '307 IPC' in the 2nd line, besides mentioning NBW to Accused 'No.2' in the 4th line and the next date of hearing as '20/12' in the last line of the seal. This clearly shows that the seal was used in taking cognizance of offence, which, certainly, ought not to have been done by the learned Magistrate without mentioning the reasons as to whether the allegations would substantiate or there is *prima facie* material against the accused from the material submitted along with the charge sheet by the Investigating agency. If any authorities are required to be quoted, the following are to the same effect:

1. **M.N. Ojha v. Alok Kumar Srivastav**²,
2. **S.R. Sukumar v. S. Sunaad Raghuram** (Crl.A.No.844 of 2015, arising out of SLP (Crl.) No.4813 of 2012, decided on 2nd July, 2015)

Therefore, the present Criminal Revision Case is allowed setting aside the order taking cognizance and consequential order issuing N.B.W. The learned Magistrate is directed to examine the material on record and pass an order in accordance with law. However, it is made clear that allowing the present revision would not amount to discharging the accused.

Miscellaneous applications, if any pending in the revision case stand closed.

JUSTICE A.SHANKAR NARAYANA

08.12.2017

Note: Issue CC by 11.12.2017

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² (2009) 9 SCC 682