

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1770 OF 2017

JUDGMENT:

Heard Sri O. Kailashnath Reddy, learned counsel for the revision petitioners - accused Nos.3 and 4, and Sri P. Nagender Reddy, learned counsel for respondent No.2, *de facto* complainant, and perused the material on record.

2. Substantially, the controversy is that the learned Magistrate was not right in taking cognizance against the revision petitioners herein, who are accused Nos.3 and 4, as the investigating officer, when filed charge sheet, has deleted their names since except the statements of LWs.1 to 6, other witnesses have not spoken to their complicity. Besides the same, the learned counsel for the revision petitioners also would contend that the order taking cognizance is very cryptic without application of mind despite the fact that the Hon'ble Supreme Court, time and again, laid down the guidelines, where the cognizance order has to reflect the mind application of the Presiding Officer or the Magistrate. The learned counsel has also pointed out the orders dated 14.10.2016 passed by the learned Magistrate. There are two orders passed by the learned Magistrate.

3. Per contra, the learned counsel for respondent No.2 would submit that in the first order dated 05.10.2016, mind application of the Magistrate is to be found as the learned Magistrate would endorse that he has perused the statements recorded under Section 161 of the Code

of Criminal Procedure, 1973 (for short 'Code'), as well as the First Information Report (FIR) and arrived at the tentative conclusion, a *prima facie* case is found against accused Nos.3 and 4 also. However, the learned counsel would submit that in the next order, a format of rubber stamp (seal) was used after the office note submitted by the concerned superintendent of the Office and the learned Magistrate has put his initial there. The first order passed by the learned Magistrate directing the office to put up note, reads thus:

“As seen from the record, i.e. FIR & 161 CrPC statements of witnesses, a *prima facie* case is found against A3 & A4 also. But, police filed c/s against A1 & A2 only. In view of decision reported in Kotla Hari Chakrapani reddy & another vs State, this Court is inclined to take cognizance on A3 & A4 also as *prima facie* case is found against A3 & A4 also. Accordingly office is directed to put up **note** for taking cognizance.”

4. The next order taking cognizance is by way of a format of rubber stamp where the blanks are filled in. The format of rubber stamp was affixed beneath the office note. It is clear from the first order passed by the learned Magistrate that except stating that he has perused the statements as well as the First Information Report and arrived at, that a *prima facie* case is made out, nothing more is finding place. In fact, accused Nos.3 and 4, at a later stage, sought to be added or cognizance is required to be taken, where the investigating officer while filing charge sheet proposes or recommends for deleting their names with certain reasons, the learned Magistrate is obligated

with the duty to specifically mention which of the statements would really reflect the complicity of accused Nos.3 and 4, though, not, assessing the evidence at that stage, in which sense, he was arrived at whether there is strong *prima facie* case or not. Thus, this particular aspect is not reflected in the order passed in the first instance.

5. Therefore, to the extent of accused Nos.3 and 4, the revision petitioners herein, the order taking cognizance is hereby set aside directing the learned Magistrate to examine the statements of the witnesses and pass appropriate orders as per the guidelines laid down by the Hon'ble Supreme Court in **M.N. Ojha v. Alok Kumar Srivastav¹** and **S.R. Sukumar v. S. Sunaad Raghuram** (Crl.A.No.844 of 2015, arising out of SLP (Crl.) No.4813 of 2012, decided on 02-07-2015).

6. Accordingly, the Criminal Revision Case is allowed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending stand closed.

A. SHANKAR NARAYANA, J

January 4, 2018.

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¹ (2009) 9 SCC 682