

THE HONOURABLE Dr.JUSTICE B.SI VA SANKARA RAO

CRIMINAL PETITION No. 9809 of 2015

ORDER:

The petitioners are accused 1 and 2 in C.C.No.114 of 2012 on the file of Judicial Magistrate of First Class, Alamuru, East Godavari District, taken cognisance for the offence punishable under Section 199, 200, 500 read with 34 IPC. It is the outcome of the private complaint of the 2nd respondent-complainant (defacto) dated 23.08.2011, mistakenly referred to Police by the learned Magistrate without considering the scope of Section 199 Cr.P.C. bar for referring offences under Sections 499 and 500 IPC to the Police for investigation though they cannot investigate and file final report to take cognisance but for if at all for the learned Magistrate to take cognisance by following the procedure contemplated under Section 200 to 204 read with 190 Cr.P.C.

It is consequent that the reference by exercise of powers under Section 156(3) Cr.P.C. by the learned Magistrate though compoundable by the other offences under Section 199 and 200 IPC in the facts of the case from the complaint averments, particularly, from paragraphs 2 to 4 for not within the scope of 195(1)(b) Cr.P.C.

The police filed final report that was taken cognisance by the learned Magistrate even otherwise removal so far as the offence under Section 500 IPC is concerned. It is the same now under impugment in the course of hearing. Out of the two options available to the 2nd respondent, the defacto complainant/complainant has to revert the clock back to the stage of private complaint filed before the learned Magistrate to private complaint under Sections 200 to 204 Cr.P.C.; or to quash the cognisance so far as the offence under Section 500 IPC without interfering with the cognisance under Sections 199 and 200 Cr.P.C., without prejudice to the defence of the accused including by filing

part two case material, in the event of hearing before charges to ask for discharge if no material to frame charges, by invoking Section 239 Cr.P.C, with part two case material at the time of hearing before charges.

Learned counsel for 2nd respondent objected to continue proceedings for the offences under Section 199 and 200 Cr.P.C.

Accordingly the petition is partly allowed by quashing the proceedings insofar as the offence under Section 500 IPC is concerned by retaining the cognisance order for offences under Section 199 and 200 IPC is concerned without prejudice to the right and defences of the accused, including to seek discharge at the time framing charges from the prosecution material.

Miscellaneous petitions, if any pending, shall stand closed.

Dr. B.SIVA SANKARA RAO, J

Date: 13.11.2018
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13th November, 2018

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