

HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE No.577 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent State.

The present revision case is filed questioning the docket order dated 26.10.2017 in issuing summons to the petitioner in PRC.No.36 of 2017 in Crime No.26 of 2016 on the file of the Judicial Magistrate of First Class, Badvel.

The facts in brief are that the petitioner, who is A4, along with others are originally charged for the offence under Sections 147, 148, 324, 307 read with 149 IPC in Crime No.26 of 2016 of B. Mattam Police Station. After investigation, charge sheet was laid, whereunder A1 to A3 and A5 to A9 were charged for the above said offences and liable to be prosecuted. It is relevant that the name of the petitioner was deleted from the charge sheet since there was no material against him. On such deletion, it appears the 2nd respondent herein filed objections dated Nil before the learned Magistrate on 26.10.2017. On the same day, the learned Magistrate issued summons to the 2nd respondent i.e., the de facto complainant. Accordingly, the 2nd respondent present and filed requisition through Additional Public Prosecutor (APP) about A4 and he is also shown as accused for taking cognizance. The learned Magistrate without even considering the objections and without passing any orders, simply issued summons to A1 to A9, including the petitioner herein, on 26.10.2017. The said docket order dated 26.10.2017 in PRC.No.36 of 2017 issuing summons to the petitioner is challenged in the present revision case.

Learned counsel appearing for the petitioner would contend that issuance of summons to the petitioner is contrary to law and vitiated by material irregularity. When the police have filed charge sheet deleting the name of the petitioner, the Court below ought not to have issued summons to him. In fact, though the 2nd respondent filed a requisition through APP for implicating the petitioner as an accused, without considering the said objections and without passing any orders on the said requisition, the Court below ought not to have issued summons to the petitioner.

Learned Public Prosecutor appearing for the 1st respondent State submitted that without considering and passing any orders on the objections filed by the 2nd respondent, summons cannot be issued to the petitioner.

Having heard the learned counsel for the petitioner and the learned Public Prosecutor and from a perusal of the material on record, it is revealed that while filing the charge sheet, the 1st respondent State has deleted the name of the petitioner from the array of the accused. However, on 26.10.2017, the 2nd respondent filed objections on deletion of the petitioner's name from the array of the accused in the charge sheet. From a perusal of the docket order dated 26.10.2017, it is clear that the Court below has not considered and passed any orders on the requisition filed by the 2nd respondent about deletion of the petitioner's name from the array of accused and straight away issued summons to the petitioner.

As far as the said docket order is concerned, unless orders are passed and fresh material is produced before the Court in the form of a protest petition and the statements of the witnesses, the

Court below, without considering the same and without passing any orders on the said protest petition or the objections, cannot issue summons. In that view of the matter, the docket order dated 26.10.2017 to the extent of issuance of summons to the petitioner herein is liable to be set aside.

Accordingly, the revision case is allowed, setting aside the docket order dated 26.10.2017 in issuing summons to the petitioner.

Miscellaneous petitions, if any, shall stand closed.

Date: 23.07.2018.
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P. KESHAVA RAO, J