

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.10717 OF 2011

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners - accused Nos.4 and 5 seeking to quash the proceedings in Calendar Case No.174 of 2011 on the file of the learned Additional Judicial Magistrate of First Class, Kandukur, Prakasam District, Andhra Pradesh State, registered for the offences punishable under Sections 417, 420, 463, 464, 466, 467, 468, 471, 452 and 506 read with 34 of the Indian Penal Code, 1860.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor. The notice sent to respondent No.2 was returned unserved with an endorsement 'door locked', and to that effect, the learned counsel filed a memo along with returned postal cover.

3. Initially, the complaint, which was filed against the petitioners herein and other accused, was investigated into by the police and final report was filed referring it as false. As against the said final report, a protest petition was filed by respondent No.2 - *de facto* complainant. The learned Magistrate, having recorded the sworn statement of the *de facto* complainant and examined as many as six (06) witnesses, took cognizance of the case against the accused, including the petitioners herein, by way of an endorsement on the docket that the entire records were perused and the statements of PWs.1 to 6 were also perused and *prima facie* case is made out against accused.

4. The learned counsel for the petitioners, now, restricts his prayer to only remand of the matter to the learned Magistrate for fresh consideration and to pass a detailed order for taking cognizance of the case, as the order of the learned Magistrate taking cognizance does not reflect any application of mind, and in support of his contention, he placed reliance on the decision rendered by the Hon'ble Supreme Court in **Sunil Bharti Mittal v. Central Bureau of Investigation**¹. In the said decision, the Apex Court observed in paragraph No.53 thus:

“53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

Observing as such, the Apex Court also held in paragraph No.55 thus:

“55. While parting, we make it clear that since on an erroneous presumption in law, the Special Magistrate has issued the summons to the appellants, it will always be open to the Special Magistrate to undertake the exercise of going through the material on record and on that basis, if he is satisfied that there is enough incriminating material on record to proceed against the appellants as well, he may pass

¹. (2015) 4 SCC 609

appropriate orders in this behalf. We also make it clear that even if at this stage, no such prima facie material is found, but during the trial, sufficient incriminating material against these appellants surfaces in the form of evidence, the Special Judge shall be at liberty to exercise his powers under Section 319 of the Code to rope in the appellants by passing appropriate orders in accordance with law at that stage.”

5. Hence, in view of the above, this Court opines that it would be just and reasonable to remand the matter to the learned Magistrate, and accordingly, the order, dated 18.05.2011, passed by the learned Magistrate in taking cognizance in the aforesaid Calendar Case is hereby set aside and the matter is remanded to the learned Magistrate with a direction to consider it afresh and pass appropriate orders uninfluenced by any of the observations made in this order.

6. With the above observation, the present Criminal Petition is disposed of.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand closed.

SMT. T. RAJANI, J

November 28, 2018
Mgr