

**HON'BLE SRI JUSTICE P. KESHA RAO**

**CRIMINAL REVISION CASE Nos.575 & 660 of 2018**

**COMMON ORDER:**

Heard the learned counsel for the petitioners as well as the respondents.

The CrI.R.C.No.575 of 2018 is filed by A.2 and CrI.R.C.No.660 of 2018 is filed by A.3 to A.5, both questioning the orders passed in C.F.No.4552 of 2017 in Crime No.64 of 2016, dated 05.01.2018 on the file of III Metropolitan Magistrate, Vijayawada, directing the Sub-Inspector of Police, Penamaluru Police Station to mention the names of the petitioners in the charge sheet and to file fresh charge sheet along with the copies thereof.

Since, in both the revisions, the petitioners are questioning the very same proceedings, with the consent of both the counsel, the matters are heard together and a common order is being passed.

The facts in brief are that on 27.1.2016 at 23.45 hours, the Assistant Sub-Inspector of Police of, Penamaluru Police Station received an intimation from the hospital along with the statement of L.W.1 stating that L.W.1 is eking out his livelihood by doing his own cultivation. Everyday, in the early morning, he used to go morning walk from his house to Cheruvu centre. As usual, on 27.1.2016 in the early morning, he went to morning walk and when he reached near the Penamaluru old police station at about 4.30 a.m., the A.1 to A.5 came on motorcycles from his backside

and restrained him, abused in vulgar language and threatened him as to how dare to file the cases against them under the Right to Information Act and also abused him in filthy language as “lanja kodaka”. Because of fear, he has not stated anything. However, A.1 & A.2 insisted A.3 to A.5 to kill him and to stab him indiscriminately and then A.3 caught his hands forcibly, A.2 & A.3 together beat him with the iron rod on his head and on his both legs under the knee, as a result, he sustained bleeding injuries. When he raised alarm, they escaped from the scene. L.W.1 went to the nearest house of L.Ws.2 and 3 and on calling 108 Ambulance van, he was shifted to Government Hospital, Vijayawada for treatment. Pursuant to the said complaint, a crime was registered vide F.I.R.No.64 of 2016 under Sections 341, 323 & 506 r/w 34 IPC. Consequent upon the registration of the F.I.R., investigation was conducted and a charge sheet was laid against A.1 and A.6 to A.10. However, the names of A.2 to A.5, petitioners herein, were deleted from the charge sheet since no *prima facie* evidence was available against them. Questioning the said deletion of the names of A.2 to A.5, the first respondent herein filed a protest petition vide C.F.No.4552 of 2017 in Crime No.64 of 2016. The learned Magistrate, after recording the statement of first respondent allowed the petition and directed the Sub-Inspector of Police, Penamaluru Police Station to mention the names of the petitioners herein, who are A.2 to A.5, by orders dated 05.01.2018. Aggrieved by the said orders, the present Criminal Revision Cases have been filed.

The learned counsel appearing for the petitioners contended that the learned Magistrate directing the Sub-Inspector of Police,

Penamaluru Police Station to mention the names of the petitioners herein in the charge sheet, is an abuse of process of law and is neither just nor maintainable in law. The Court below while passing the impugned orders ought not to have directed the Sub-Inspector of Police to include the names of the petitioners herein, but it is for the Magistrate to pass appropriate orders either for inclusion or dismissal of the protest petition. He cannot relegate the inclusion of the names of the petitioners herein as array of accused, to the Sub-Inspector of Police, Penamaluru Police Station. In fact, Section 204 of Cr.P.C. contemplates that if in his opinion, for taking cognizance of an offence, there is sufficient ground for proceedings, the Magistrate can issue summons for attendance of the accused in a Summons Case, and he may issue a warrant, if he thinks fit, in a Warrants Case, causing the appearance of the accused. However, in the case on hand, the learned Magistrate has directed the Sub-Inspector of Police to mention the names of the petitioners in the charge sheet and to file a fresh charge sheet.

*Per contra*, the learned Public Prosecutor appearing for the second respondent-State fairly conceded that the impugned orders passed by the learned Magistrate are not sustainable in law since the Magistrate after filing of the charge sheet and on recording the statement of the de facto complainant, pursuant to the protest petition, either he has to take cognizance of the offence against the accused-petitioners herein and issue summons or, if he has not satisfied with the report, he can redirect the investigating agency to conduct the investigation properly and file a fresh report. In the case on hand, the Magistrate passed the orders contrary to the provisions of Section 204 of Cr.P.C.

Having heard both the counsel and from a perusal of the material on record, it is revealed that the impugned orders passed by the learned Magistrate, directing the Sub-Inspector of Police, to mention the names of the petitioners in the charge sheet and file a fresh charge sheet, is not sustainable in law for the reason that Section 204 of Cr.P.C. mandates the learned Magistrate, after recording the statements of witnesses and from a perusal of the charge sheet, if he is of the opinion, for taking cognizance of an offence, there is sufficient ground for proceedings, he can issue summons for appearance of the accused. But, in the case on hand, the learned Magistrate, after taking cognizance of the offence, instead of issuing summons to the accused-petitioners herein, directed the Sub-Inspector of Police to mention the names of the petitioners and file a fresh charge sheet. This procedure is not contemplated under the provisions of Cr.P.C. In fact, it is for the learned Magistrate to array the petitioners as accused, if in his opinion, for taking cognizance, there is sufficient ground available on record, he himself has to issue the summons after arraying the petitioners as accused. Therefore, this Court is of the opinion that the impugned order challenged in the present Criminal Revision Cases, suffers from material defect while impleading the petitioners as accused and therefore, the same is liable to be set aside.

Accordingly, both the Criminal Revision Cases are allowed setting aside the orders passed in C.F.No.4552 of 2017 in Crime No.64 of 2016, dated 05.01.2018 on the file of III Metropolitan Magistrate, Vijayawada. However, the present orders will not preclude the learned Magistrate to consider the matter afresh and

pass appropriate orders based on the contents of the charge sheet and the statement of L.W.1 as per law.

Pending Miscellaneous petitions, if any, shall also stand closed.

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**P. KESHA RAO, J**

Date: 09.07.2018.

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