

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2096 of 2016

ORDER :

The petitioners are A.2 to A.4 of C.C.No.4 of 2014 on the file of the XIII Additional Chief Metropolitan Magistrate, Mahila Court, Nampally, Hyderabad. The 2nd respondent is the complainant. She filed the private complaint on 12.12.2013 against four accused including A.1-her husband. A.2 to A.4 are A.1's brother, mother and father. The prayers in the private complaint is refer to police for investigation.

2. No doubt, the provision of law instead of Section 156(3) Cr.P.C. referred wrongly as if under Section 195(4) Cr.P.C.. The mere quoting of wrong provision no way fatal, have the learned Chief Metropolitan Magistrate applied his mind in verification of the facts as to refer or to take cognizance by following the private complaint procedure within his discretion. The office raised an objection on 17.12.2013 saying a copy of the Nikhanama with translation not filed. The objection was complied with and represented and ordered to be check and put up on 23.12.2013. Subsequently, the order, dated 17.01.2014, of the learned Chief Metropolitan Magistrate, reads as follows:

Complainant present. Upon considering the entire record as well as summons. The complainant could able to establish prima facie material against accused with regard to cognizable offences.

Hence the complainant is taken on file U/sec.498-A, 420 of IPC and Sec.4 and 6 of DP Act against A1 to A.4

Registered as CC.04 of 2014. Issue summons to A1 to A4 through court RPAD.”

3. This order is *per se* non-application of mind even to Section 200 Cr.P.C. read with 190 Cr.P.C. The complainant is in her cause title mentioned as private service. She is a private person, cause is private. Recording of sworn statement of the complainant and witnesses present, if any, is essential if at all to take cognizance for any of the offences against any accused referred in the private complaint by passing a reasoned order, if not chosen to refer to police for investigation.

4. Having regard to the above, the order is set aside including the cognizance and reverted the clock back by restoring the private complaint to the file of learned Chief Metropolitan Magistrate to follow the procedure either contemplated under Section 156(3) Cr.P.C. if at all to refer to police for investigation, if at all, if discloses any cognizable offence against any of the four accused else if at all chosen to record the sworn statement of the complainant and witnesses present if any, then record the same and peruse the material and if not rejected to issue summons for their appearance as contemplated by Section 200 to 204 read with 190 Cr.P.C. It is needless to say, the cognizance order is set aside as a whole including for A.1 not before the Court as totally unsustainable, invoking Section

482 Cr.P.C. in restoring the complaint by reverting clock back referred supra.

5. With the above observations, the criminal petition is allowed setting aside the order, dated 17.01.2014, and reverted the clock back by restoring the private complaint to the file of learned XIII Chief Metropolitan Magistrate, Mahila Court, Nampally, Hyderabad.

Miscellaneous petitions pending, if any, in the criminal petition shall stand closed.

27th November 2018.

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Dr. B. SIVA SANKARA RAO, J

