

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.646 of 2013

ORDER:

This Criminal Revision Case is filed by the petitioners/accused aggrieved by the docket order dated 10.01.2013 in C.C.No.67 of 2008 passed by learned Judicial Magistrate of First Class, Special Mobile Court, Machilipatnam, Krishna District whereunder the learned Judge in a private warrant case following the procedure contemplated under Sections 244 to 246 Cr.P.C., upon taking the evidence of complainant, having come to the conclusion that evidence produced by the complainant disclosed a ground for presuming that the accused have committed an offence punishable under Sections 454 and 379 r/w 34 IPC, ordered for framing of charges and examination of accused under Section 246 Cr.P.C. and posted the matter to 31.01.2013.

Hence, the Criminal Revision Case.

2) When the matter came up for hearing, learned counsel for petitioners would submit that trial Court ought to have framed the charges at the first instance and then embarked upon taking up the evidence, but contrary to the said procedure, the trial Court at first examined the witnesses and expressed its satisfaction over depiction of ground to presume commission of offence *prima facie* for the offence under Sections 454 and 397 Cr.P.C. and decided to frame the

charges which is a great procedural infirmity which vitiated the entire proceedings and therefore the said order is liable to be set aside.

3) I am unable to be convinced with the said argument. Admittedly, the case on hand is the one instituted otherwise than on a police report. That being so, the procedure contemplated under Sections 244 to 246 Cr.P.C. is required to be followed by the trial Court. The aforesaid sections are thus:

“Sec.244 Evidence for prosecution.

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Sec. 245 When accused shall be discharged.

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Sec.246 Procedure where accused is not discharged.

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub- section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross- examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross- examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross- examination and re- examination (if any), they shall also be discharged.

The above Sections would depict that whenever a warrant case is instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall take up the evidence adduced by the prosecution. Thereupon, if the Magistrate considers that no case against accused has been made out of the evidence produced by the prosecution, then the Magistrate shall discharge the accused or otherwise when such evidence, in the opinion of the Magistrate, depicts a ground for presuming that accused has committed an offence triable under Chapter XIX Cr.P.C. and he is competent to try the same and adequately punish the accused, he shall frame in writing a charge against the accused.

4) In the instant case, the learned Magistrate appears to have followed the procedure laid down under Sections 244 to 246 Cr.P.C. and examined the witnesses produced by the prosecution and come to opinion that there exists a ground that accused committed an offence punishable under Sections 454 and 379 r/w 34 IPC and embarked to frame charges.

5) It is to be noted that unlike in the case instituted upon a police report, in a case instituted upon a private complaint, since the Magistrate will not have the advantage of the report filed by investigating agency showing that certain offence is committed by the accused, the Magistrate has to take up that exercise by examining the witnesses produced by the prosecution and then come to an opinion that there exists a ground to presume that the accused committed an

offence and then proceed to frame charges. This, precisely is the difference between the case instituted on a police report and case instituted otherwise than on a police report, narrated in Chapter XIX Cr.P.C. Absolutely there is no procedural deviation committed by the learned Magistrate as alleged.

6) Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 25-10-2018
Murthy

U.DURGA PRASAD RAO, J

