

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5196 OF 2018

ORDER:

This Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the order dated 31.12.2015 passed by the Additional Judicial Magistrate of First Class, Kavali, in C.C. No.1162 of 2015, whereby the learned Magistrate took cognizance of the offence punishable under Sections 143, 148, 452, 324 read with 149 of the Indian Penal Code, 1860 (for short 'I.P.C.') based on the charge sheet filed by the first respondent under Section 323, 290 read with 34 of I.P.C. in Crime No.199 of 2014 of Kavali II Town Police Station.

On the complaint lodged by the second respondent, the police registered a case in Crime No.199 of 2014, investigated into and filed charge sheet against the petitioner and 4 others for the offence punishable under Sections 323, 290 read with 34 I.P.C. which is now pending on the file of Additional Judicial Magistrate of First Class, Kavali, but the learned Magistrate took cognizance of the offence punishable under Sections 143, 148, 452, 324 read with 149 I.P.C. and the Court affixed the stamp instead of passing order, applying its mind to the facts of the case.

Therefore, taking cognizance of the offences punishable under Sections 143, 148, 452, 324 read with 149 I.P.C. is challenged on the ground that when the charge sheet is filed for different offence, the Magistrate is not supposed to take cognizance of different offence based on the material available on record and the basis for his claim is the judgment of the Apex Court in **State**

of Gujarat v. Girish Radhakrishnan Varde¹. Hence, the order passed by the court below is sought to be quashed.

During hearing, the only contention raised before the Court is that when the charge sheet is filed by the police for the offence punishable under Sections 323, 290 read with 34 of I.P.C. on the file of Additional Judicial Magistrate of First Class, Kavali, the Magistrate is not expected to take cognizance of different offences punishable under Sections 143, 148, 452, 324 read with 149 I.P.C. Thereby the order passed by the Magistrate taking cognizance of different offence is an illegality in view of the law declared by the Apex Court in **Girish Radhakrishnan Varde**'s case referred supra and prayed to quash the proceedings.

Whereas, the Public Prosecutor for the State of Andhra Pradesh supported the order impugned in this petition.

Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

Whether the Magistrate is competent to take cognizance of the offence under Sections 143, 148, 452, 324 read with 149 I.P.C. when a charge sheet is filed for the offence punishable under Sections 323, 290 read with 34 I.P.C. by the first respondent before the Additional Judicial Magistrate of First class, Kavali?

POINT:

It is an undisputed fact that the charge sheet is filed against the petitioner and four others for the offence punishable under Sections 323, 290 read with 34 I.P.C., but the Magistrate took cognizance of different offence. The Apex Court in **Girish**

¹ (2014) 3 SCC 659

Radhakrishnan Varde's case referred supra held that when F.I.R. was registered with the police station concerned and after completion of investigation the police filed charge sheet against the accused for different offence, despite it, the court took cognizance of different offence, and therefore, the court is of the view that when the case arise out of the police report as a first information report had been lodged before the police under Section 154 Cr.P.C. If a case is registered by the police based on the F.I.R. registered at the police station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(1)(a) or 202 Cr.P.C. before the Magistrate, obviously the magisterial enquiry cannot be held in regard to the F.I.R. which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the charge sheet unless a complaint before the Magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, after submission of the charge sheet, the matter goes to the Magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of F.I.R. and the Magistrate cannot exclude or include any section into the charge sheet after investigation has been completed and charge sheet has been submitted by the police.

The Apex Court distinguished the case filed on private complaint and police report and finally concluded that when the charge sheet is filed for the offence against particular accused, the Court cannot take cognizance for different offences, but a charge

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can be framed after hearing of the Public Prosecutor or the defence counsel for different offence, if the material on record make out a different offence, but at the stage of taking cognizance, the court cannot exercise such power and took cognizance of different offences other than offence for which the charge sheet is filed.

It is evident from the record that the stamp affixed on the charge sheet taking cognizance of various offences that the Magistrate has not applied his or her mind to the facts of the case, but mechanically affixed the stamp, took cognizance of offence under Sections 143, 148, 452, 324 read with 149 I.P.C. is a serious illegality and thereby the order is liable to be set aside.

In the result, the Order dated 30.12.2015 in C.C.No.1162 of 2015 passed by the Additional Judicial Magistrate of First Class, Kavali, taking cognizance of the offence under Sections 143, 148, 452 324 read with 149 I.P.C. is hereby set aside, leaving it open to take cognizance of the offence by fresh order by applying mind to the facts of the case and the learned Magistrate is at liberty to frame different charge other than the Sections mentioned in the charge sheet, subject to availability of material, upon hearing the Public Prosecutor and the defence counsel at the time of framing charges.

Accordingly, the criminal petition is allowed.

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

M. SATYANARAYANA MURTHY, J

Date:06.06.2018
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