

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.2395 of 2018

ORDER :

This Criminal Revision Case is arising out of the docket order dated 26.04.2018 in Crime No.37 of 2018 passed by the learned Judicial First Class Magistrate, Narsapur, Medak District, whereunder the learned Magistrate has referred the matter to the police for investigation under Section 156 (3) of Cr.P.C. and to file a report.

Heard learned counsel for the petitioners/A.1 and A.2 as well as the learned counsel for respondent No.2/complainant and the learned Public Prosecutor. Perused the order under revision.

Learned counsel for the petitioners submits that the impugned docket order dated 26.04.2018 passed by the learned Magistrate is not a speaking and the same does not reveal as to what documents were considered by the learned Magistrate and basing on what material, the matter was referred for investigation by the police. The learned counsel further submits that the impugned docket order passed by the learned Magistrate reveals that on perusal of the record, on the alleged question of manipulation of documents by fabrication, the matter was referred to the police for verification.

At the outset, the impugned docket order dated 26.04.2018 passed by the learned Magistrate reads as under:

“Perused the record and this is a case alleged to be a question of manipulation of documents by fabrication, where the verification is required. Hence this Court, in the above said circumstances find fit in referring this case to the Police U/s.156 (3) Cr.P.C. to investigate and file the report. Call on 20.06.2018.”

The above order reveals that the learned Magistrate, except stating that he perused the record, has not assigned any reasons to come to a conclusion that there was a dispute with regard to manipulation of documents by fabrication and hence referred the matter for investigation by the police under Section 156 (3) of Cr.P.C.

In this regard, it is relevant to extract the provision under Section 156 (3) of Cr.P.C., which reads as under:

“156. Police Officer’s power to investigate cognizable case:-

(1) and (2)

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

A perusal of the provision under Section 190 of Cr.P.C., which deals with the cognizance of offences by Magistrates, reveals that the facts of the present case squarely attracts by the provision under Section 190 (1)(a) of Cr.P.C.

For the sake of convenience and ready reference, the provision under Section 190(1)(a) is extracted hereunder:

“190. Cognizance of offences by Magistrates:-

(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specifically empowered in this behalf under sub-section (2), may take cognizance of any offence:-

(a) upon receiving a complaint of facts which constitute such offence;

(b)

(c)”

In the instant case, the learned Magistrate on receipt of a complaint, passed the impugned order, as above. However, he has not specified as to what documents are fabricated and how they are fabricated. On the other hand, the learned Magistrate has referred the matter for verification of the documents. From the above order, it appears that the learned Magistrate has not verified the documents and, therefore, he has referred the documents for verification by the police.

Further, the impugned docket order dated 26.04.2018 is not a speaking order. When the learned Magistrate comes to a conclusion that there is manipulation of the documents by fabrication, he could have taken cognizance of the same directly and there was no necessity for further investigation by the police under Section 156 (3) of Cr.P.C.

Learned counsel for the petitioner has placed reliance on a judgment dated 14.11.2018 passed by this Court in Crl.RC.No.2071 of 2018, wherein this Court, while referring to the judgments of the Apex Court in ANIL KUMAR AND OTHERS vs. M.K. AIYAPPA AND ANOTHER¹ and in MOHAMMED IBRAHIM AND OTHERS vs. STATE OF BIHAR AND ANOTHER², has set aside the similar order passed by another Magistrate with a direction to the learned Magistrate to dispose of the matter by following the provision under Section 156 (3) of Cr.P.C.

In the light of the above decision, since the order under challenge is also akin to the order passed by the learned Magistrate in the above decision, the impugned docket order dated 26.04.2018 is set aside and the learned Magistrate is directed to dispose of the matter by following the provision under Section 156 (3) of Cr.P.C.

Accordingly, this Criminal Revision Case is disposed of.

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

29.11.2018
Msr

GUDISEVA SHYAM PRASAD, J

¹ (2013) 10 SCC 705

² (2009) 8 SCC 751

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