

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.2535 OF 2018

ORDER:-

This Criminal Revision Case is arising out of an order, dated 10.05.2018, passed in CrI.M.P.No.1551 of 2017 in C.C.No.276 of 2016 by the learned II Additional Judicial Magistrate of First Class, Kadapa wherein a petition filed under Section 239 Cr.P.C. seeking for discharge of the petitioner/A-3 for the offences under Sections 419, 420, 468, 471 and 506 read with 34 I.P.C. arising from a case in Crime No.247 of 2012 in the above C.C., was dismissed.

2. Heard the arguments of the learned counsel for the petitioner/A-3 and the learned Public Prosecutor appearing for the respondent/State.

3. The *de facto* complainant made a complaint before the Superintendent of Police, Kadapa against A-1 and A-2 on 31.12.2012 and basing on the endorsement of the Superintendent of Police, a case in Crime No.247 of 2012 was registered by the Station House Officer, Chinna Chowk Police Station, Kadapa against A-1 and A-2 on 31.12.2012.

4. It is the case of the petitioner that there are no allegations against him. Therefore, he has filed CrI.M.P.No.1551 of 2017 under Section 239 Cr.P.C. seeking for his discharge in Crime No.247 of 2012 in C.C.No.276 of 2016.

5. Learned counsel for the petitioner mainly submits that the trial Court, without there being any material against the petitioner,

has taken cognizance of the offences stated against him. Learned counsel referred to the complaint lodged by the *de facto* complainant and submits that the *de facto* complaint discloses the names of Nimmakayala Chandra Reddy and Shaik Rahamathullah and the complaint does not contain the name of the petitioner anywhere and there are no allegations against him. Learned counsel further refers to the order of the learned trial Court wherein at page No.5, it is held as under:-

“..... In the case on hand also the de facto complainant in proceedings vide R.Dis (C5)/300/M/2007 dated 14.11.2009 stated specific allegations against the petitioner. Under these circumstances, this Court is of the opinion that as there is prima facie case against the petitioner for the offences u/Sec.419, 420, 468, 471, 506 r/w.34 of IPC and further it is well settled legal principal that when there is prima facie case against the accused, there will be no discharge. Hence, this petition is dismissed.”

Learned counsel for the petitioner submits that the said proceedings referred by the learned Magistrate do not form part of the charge sheet.

6. Learned Public Prosecutor also submits that the proceedings referred by the learned Magistrate are not available.

7. It is pertinent to note that the trial Court observed that the *de facto* complainant was not made a party to the petition to put forth his version as to the allegations against him. Having observed the same, the trial Court came to a conclusion that there is a *prima facie* case against the petitioner/A-3.

8. In view of the fact that the proceedings relied on by the learned trial Court are not forming part of the record here in this

revision nor provided by the learned Public Prosecutor, as they are not available, and as the *de facto* complainant was not made a party in the discharge petition, the order passed by the learned trial Court is suffering from legal infirmities.

9. Therefore, the order, dated 10.05.2018, passed in Crl.M.P.No.1551 of 2017 in C.C.No.276 of 2016 by the learned II Additional Judicial Magistrate of First Class, Kadapa is set aside with a direction to the trial Court to add the *de facto* complainant as a party in Crl.M.P.No.1551 of 2017 and refer to the documents relied on by him in the appendix of evidence and consider the material and then pass appropriate orders in accordance with law.

10. With the above observations, the Criminal Revision Case is disposed of.

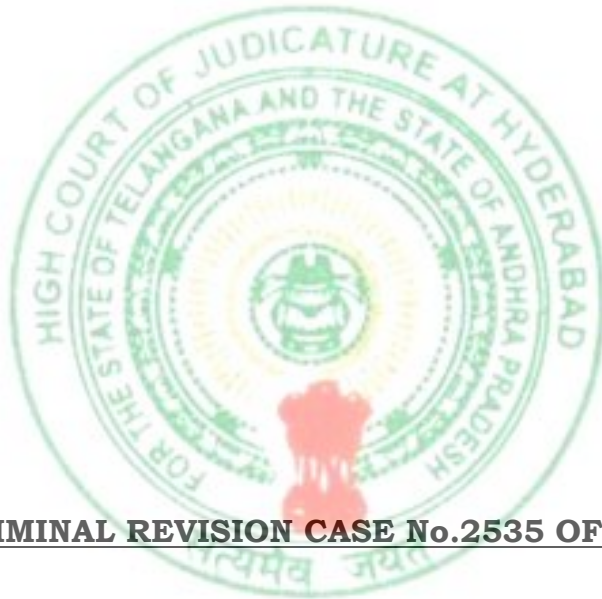
11. Miscellaneous Petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD

Date : 11.12.2018
AMD

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL REVISION CASE No.2535 OF 2018

Dated: 11.12.2018

AMD