

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8456 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioner/ de facto complainant to declare the action of the Court of the V Additional Judicial First Class Magistrate, Rajahmundry, in proceeding with the trial of the case in C.C.No.62 of 2015 on its file for the offences under Sections 498-A and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act without taking into consideration of the additional charge sheet filed for an offence under Section 494 IPC as illegal, arbitrary and abuse of process of law and consequently direct the Court below to take the additional charge sheet into consideration before proceeding with the trial of the case in the said C.C.

2. The petitioner herein is the de facto complainant, 1st respondent is the accused and the 2nd respondent is the State of Andhra Pradesh. The above crime was registered originally for the offences under Sections 498-A and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, on the report of the de facto complainant. The police, after investigation, filed charge sheet. The trial Magistrate taken cognizance and allotted C.C.No.62 of 2015.

3. It is, while, the proceedings are pending at the post cognizance stage, police filed an application for further investigation in relation to offence under Section 494 IPC. It appears that the police, pursuant to the permission accorded by the learned Magistrate, conducted further investigation and submitted additional charge sheet and on 07.01.2017, the trial magistrate raised certain objections and returned the charge sheet. The police whether represented or not, is now in issue.

4. The main impugment of the de facto complainant/ petitioner is that the learned Magistrate is trying to proceed with the trial of the case without waiting for taking cognizance on the supplemental charge sheet for the offence punishable under Section 494 IPC also. Though there is no provision under Cr.P.C. or under Criminal Rules of Practice for return of the charge sheet and particularly from Section 173(2) Cr.P.C. it speaks from the completion of the investigation by the police officer, in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating the names of the parties; the nature of the information; the names of the persons who appear to be acquainted with the circumstances of the case(witnesses); whether any offence appears to have been committed and, if so, by whom(accused

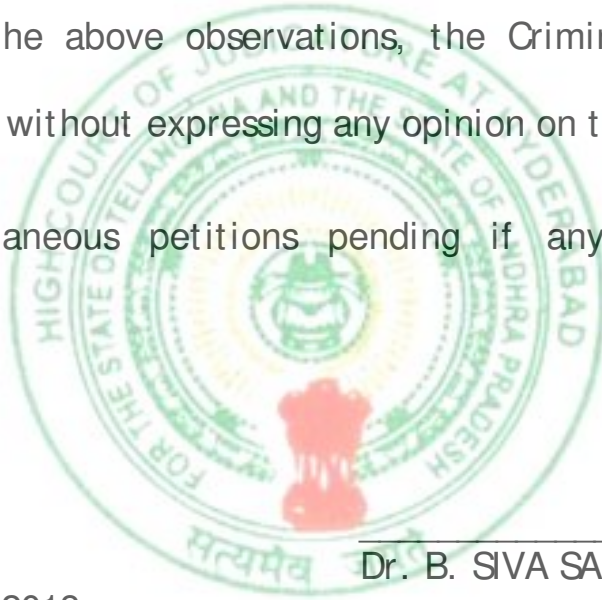
and of what offences); whether the accused has been arrested; whether he has been released on his bond and, if so, whether with or without sureties; whether he has been forwarded in custody under section 170; whether report of medical examination of woman attached in investigation relation to Section 376 IPC and other additional sections under Section 376 IPC. In clause (ii) of sub-section 2 of Section 173 further speaks the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given..... It clearly lays down what are the compliances to take cognizance of the police final report filed in the form of charge sheet. Once the compliance is not made, the Magistrate got a discretion to comply as without compliance, the question of taking cognizance is premature for no provision to reject other than with observation of no offence made out, if the police came to an opinion of offence made out by differing with that opinion as laid down by the Apex Court in Dharampal and others v. State of Haryana¹. Once such is the case, though the Magistrate can return the charge sheet for compliance, police cannot keep the charge sheet with them but to submit back to the Magistrate for passing appropriate order to take cognizance.

¹ 2014 (3) SCC 306

5. Having regard to the above, the Criminal Petition is disposed of by instructing the 2nd respondent-State of Andhra Pradesh representing the Station House Officer to re-submit the supplemental charge sheet, if not resubmitted by complying with the requirements under Section 173(2)(i) Cr.P.C. referred supra for the learned Magistrate to take cognizance or not, to pass appropriate orders there from proceed with trial in C.C.No.62 of 2015 as expeditiously as possible.

6. With the above observations, the Criminal Petition is disposed of, without expressing any opinion on the merits.

7. Miscellaneous petitions pending if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 02.11.2018
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