

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.2966 OF 2018

ORDER:

This revision is arising out of order, dated 18.08.2018 passed in Court Fee No.872 of 2018 on the file of the Addl. Judl. Magistrate of I Class, Anantapuramu.

2. The petitioners are A1 to A3 in C.C.No.118 of 2018 on the file of the Addl. Judl. Magistrate of I Class, Anantapuramu. The 1st respondent is the State and the 2nd respondent is the de facto complainant.

3. Heard the arguments of the learned counsel for the petitioners-A1 to A3 and the learned Public Prosecutor representing the State.

4. After hearing the arguments, I am of the considered view that there is no need to issue notice to the de facto complainant in this case. Therefore, this revision is disposed of at the stage of admission.

5. Learned counsel for the petitioners submits that the trial Court has already taken cognizance for the offences punishable under Sections 420, 498-A and 506 r/w 34 IPC and 3 and 4 of Dowry Prohibition Act and numbered the case as C.C.No.118 of 2018. Thereafter, the 2nd respondent had filed a private complaint under Sections 200 and 210 (2) Cr.P.C. putting forward her case against the accused and requested the Court to take cognizance for the offence punishable under Section 307 IPC apart from the cognizance already taken for the offences by the trial Court in C.C.No.118 of 2018. He further submits that once the trial Court has taken cognizance of the offences basing on the charge sheet filed by the police after investigation in

C.C.No.118 of 2018, the learned Magistrate has no power to add one more Section, which is triable by the Court of Session i.e., Section 307 IPC basing on the contents of the complaint received.

6. Learned Public Prosecutor submits that the learned Magistrate has power to take cognizance of the offence basing on the contents of the complaint received under Section 200 Cr.P.C. Accordingly, the learned Magistrate has taken cognizance of the offence under Section 307 IPC in view of provisions under Section 200 and 210 (2) Cr.P.C. and about to commit the case to the Court of Session by following the provisions under Sections 208 and 209 Cr.P.C. and there is no illegality or irregularity in the order passed by the trial Court.

7. The point that arises for consideration in this revision is whether any illegality or irregularity is committed by the learned Magistrate in taking cognizance of the offence punishable under Section 307 IPC basing on the private complaint filed by the de facto complainant, who had also lodged a complaint before the police, basing on which police registered the case and filed charge sheet for taking cognizance of the offences, which are triable by the learned Magistrate?

8. At the outset, it is obvious that there is a police report and private complaint before the trial Court. The trial Court basing on the charge sheet filed by the police has taken cognizance of the offences punishable under Sections 420, 498-A and 506 r/w 34 IPC and 3 and 4 of Dowry Prohibition Act against the accused and numbered as C.C.No.118 of 2018. Thereafter, the de facto complainant in the above C.C. has filed a private complaint before the same

Magistrate under Section 200 and 210 (2) Cr.P.C. to take cognizance against the accused for the offence punishable under Section 307 IPC. The learned Magistrate has taken cognizance of the offence punishable under Section 307 IPC apart from the offences, which were already taken cognizance by the trial Court in the above C.C.

9. The contention of the learned counsel for the petitioners is that the learned Magistrate cannot take cognizance of the offence punishable under Section 307 IPC basing on the complaint received by her, once she had taken cognizance of the offences against the accused basing on the charge sheet filed by the police.

10. Section 210 (2) Cr.P.C. reads thus:

“ If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.”

The purport of Section 210 (2) Cr.P.C. clearly reveals that a Magistrate can receive both the report under Section 173 Cr.P.C. by the investigating police officer and also a private complaint filed by the complainant and try both of them together as if both the cases were instituted on a police report. Therefore, there is no distinction between police report and the private complaint for the Magistrate to consider them for trial.

11. In this case what happened was basing on the police report, the learned Magistrate has taken cognizance of the offences punishable under Sections 420, 498-A and 506 r/w 34 IPC and 3 and 4 of Dowry Prohibition Act.

Thereafter, basing on the private complaint made by the de facto complainant under Section 200 Cr.P.C., the learned Magistrate has taken cognizance of one more offence punishable under Section 307 IPC. In view of provision under Section 209 Cr.P.C., if the offence is exclusively triable by a Court of Session, the learned Magistrate cannot take up the trial together. Therefore, the learned Magistrate invoking provision under Section 323 Cr.P.C. has taken cognizance of the offence punishable under Section 307 IPC apart from taking cognizance of the offences punishable under Sections 420, 498-A and 506 r/w 34 IPC and 3 and 4 of Dowry Prohibition Act against the accused. Since the offence punishable under Section 307 IPC is exclusively triable by a Court of Session, the learned Magistrate has no power to try the case. Therefore, C.C.No.118 of 2018 is withdrawn and converted the same as PRC No.39 of 2018 as contemplated under Section 323 Cr.P.C.

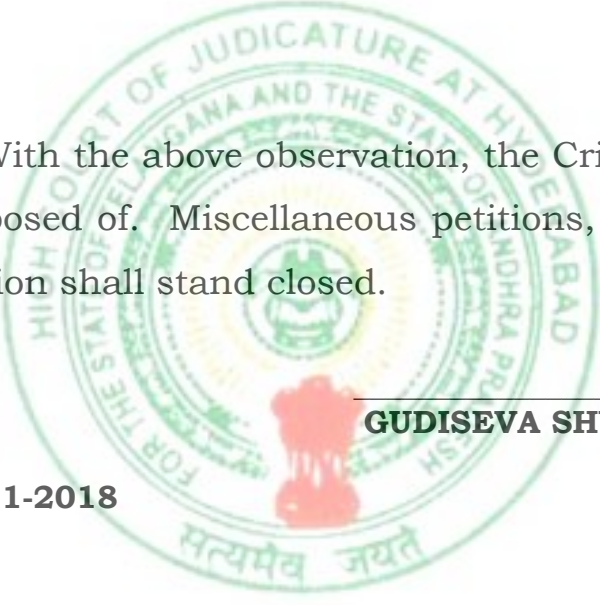
12. Learned counsel for the petitioners raised a serious objection for the competency of the learned Magistrate to withdraw the C.C. from her file by converting it as PRC No.39 of 2018 as per the provision under Section 323 Cr.P.C.

13. The learned Magistrate has withdrawn the C.C. No.118 of 2018 from her file and clubbed it with the private complaint and numbered it as PRC No.39 of 2018. The learned Magistrate in fact has no other option except to combine the C.C. and private complaint and commit the case to the Court of Session for the reason that the cognizance taken by the learned Magistrate in both the police report and the private complaint are almost same, except Section 307 IPC in the private complaint.

14. The learned Magistrate has exceeded the jurisdiction by withdrawing the C.C. from her file. However, though there are slight technicalities in passing the order by the learned Magistrate by withdrawing the case, in my view, there is no illegality or irregularity in the order passed by the learned Magistrate keeping in view of the provisions under Sections 210 (2) and 323 Cr.P.C.

15. In view of my foregoing discussions, the learned Magistrate is directed to commit PRC No.39 of 2018 by following the procedure under Sections 190, 200, 208 and 209 Cr.P.C., if the Magistrate has not followed the procedure earlier.

16. With the above observation, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any pending in this revision shall stand closed.



GUDISEVA SHYAM PRASAD, J

DATED: 02-11-2018

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