

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CrI.R.C.Nos.2772 of 2017 & 2815 of 2018

COMMON ORDER:

CrI.R.C.No.2772 of 2017 is preferred against the docket order dated 11.09.2017 passed in CrI.R.C.(SR) No.7544 of 2017 in CrI.M.P.No.1669 of 2014 in C.C.No.1486 of 2011 by the I Additional District Judge-cum-Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar.

2. CrI.R.C.No.2815 of 2018 is preferred against the docket order dated 25.10.2017 passed in CrI.M.P.No.359 of 2017 in C.C.No.1486 of 2011 by the XVI Metropolitan Magistrate, Cyberabad, Ranga Reddy District at Kukatpally.

3. As the issue involved in these Petitions is common arising from the common order, both the petitions are heard together, and being disposed of by this common order.

4. The revision petitioner *de facto* complainant filed the protest petition vide CrI.M.P.No.1669 of 2014 before XVI Metropolitan Magistrate, Cyberabad at Kukatpally, against the respondents No.1 to 5, accused in C.C.No.1486 of 2011. The learned Magistrate has passed docket order during pendency of the protest petition, as follows:

"It was represented by learned Assistant Public Prosecutor that the prosecution wants to file petition for bringing the petition schedule accused into the main case and asked for the closure of the petition. Hence this petition was closed."

5. On perusal of the docket order, it appears that a representation was made by the learned Assistant Public Prosecutor (APP), that they would file a petition for bringing the petition schedule accused into the main case. The trial Court on consideration of the representation of said APP has closed the protest petition. Subsequently, the learned APP has filed 319 Cr.P.C. petition in C.C. No.1486 of 2011 before the same Court, and the learned APP has not-pressed the said petition on 25.10.2017. The revision petitioner has also filed a revision against the orders in the protest petition, but the said petition was closed.

6. During arguments, learned Public Prosecutor submits that the concerned APP is present before the Court today, and she states that she has not-pressed the petition with an intention to file a fresh petition for compliance of the docket order of trial Court dated 06.11.2017. Therefore she has withdrawn Section 319 Cr.P.C. petition and she intends to take appropriate steps for adding of the parties A4 & A5 in the charge sheet.

7. Learned counsel for the petitioner submits that since the Assistant Public Prosecutor having made a representation to the Court that she would array the accused in main case, the Court below believed the representation of APP, the protest petition was closed. But, subsequently A4 & A5 were

not arrayed as accused. The rights of the *de facto* complainant are prejudiced as subsequently no steps were taken by the APP in adding the names of accused/A-4 & A-5 in the petition schedule.

8. On perusal of the record, it clearly reveals that on the representation made by the Assistant Public Prosecutor in the protest petition was closed. In fact the Court believed the representation made by APP and dismissed the protest petition. Subsequently the said APP has filed a petition under Section 319 Cr.P.C. to add the accused/A4 & A5 as parties has not-pressed the petition for the reason that in paras 5 and 6 of the Protest Petition contained some allegations against the investing officer. It is further stated by the learned APP that due to pressure of work she has signed petition without going through the contents therein. As such, she has withdrawn the petition filed Under Section 319 Cr.P.C., and now she is intending to file a fresh petition for complying with the docket order dated 06.11.2017.

9. Keeping in view the fact that the said APP is still in the process of taking steps for complying with the order dated 06.11.2017, and it is obvious that the docket order passed by the trial Court is based on the representation made by APP, it has to be seen whether APP can array the names of A4 & A5 and whether she could give such an undertaking to this Court.

10. Learned APP has drawn attention of this Court to provision under Section 190 (1) Cr.P.C. and submits that the Court can take cognizance of the offences under three circumstances, which reads as under:

- (a) *upon receiving a complaint of facts which constitute such offence;*
- (b) *upon a police report of such facts;*
- (c) *upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

11. It is obvious that the trial Court without considering the merits in the protest petition has simply based on the representation of APP closed the petition, which is not contemplated under law. The closure of protest petition is not in accordance with law. In fact, both parties have filed their pleadings. The respondent in the protest petition has filed counter and contested the matter. The counter filed by R4 & R5 has not been considered by the Court below simply basing on the representation of the APP. Thereby the rights of the A4 and A5 are affected, as their counter was not considered by the Court while passing the orders in protest petition.

12. Keeping in view the facts and circumstances of the case, I hereby set aside the docket order dated 11.9.2017 passed in CrI.R.P (SR) No.7544 of 2017 in CrI.M.P.No.1669 of 2014 in C.C.No.1486 of 2011 on the file of I Additional

District Judge-cum-Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar, and direct the trial Court to give an opportunity to both the parties, and hear the matter and pass an appropriate order, on the protest petition on merits, within three (03) weeks from the date of receipt of a copy of this order. The learned APP is directed to be more careful in future while making submissions before the Court concerned.

13. The learned Presiding Officer is also directed to consider the written representation of the APP while passing any orders, and pass a speaking order in such matters, where the valuable rights of the accused are involved, in respect of their personal liberty.

14. *Audi Alteram Partem* is to be followed. Nobody should be condemned unheard. It is applicable while passing orders. In this case the counter filed by R4 and R5 in the protest petition was not considered, but merely relying on the oral representation of the APP dismissed the protest petition.

15. With the above directions, these Criminal Revision Cases are disposed of.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 23-10-2018
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