

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4544 of 2017
and
Transfer Criminal Petition No.248 of 2018

COMMON ORDER :

Heard both the matters together as the parties in both are one and the same. A private complaint was filed by the 2nd respondent to the CrI.P.No.4544 of 2017 against the accused/petitioner for the alleged offences u/sec.171(E) to (I) and 200 IPC. The learned Addl.Judl.Magistrate of First Class/Special Mobile Court(for short, the AJFCM'), Karimnagar taken cognizance within his discretion even asked to refer to police for investigation, stating as cannot be referred for all the offences are non-cognizable and on reference u/sec.156(3) CrPC invoking Section 154 CrPC police cannot register a crime, but for to obtain any permission of the learned Magistrate as contemplated by Section 155CrPC which is pre-requisite as per the expression of the Apex Court in **Tilak Nagar Industries Limited Vs. State of Telangana**¹.

2. Earlier revision petition CrI.R.C.No.162 of 2017 is filed against the docket order, dt.03.11.2016 of the (for short, the AJFCM'), Karimnagar in C.F.No.3921 of 2016 impugning the return of said unnumbered complaint for want of jurisdiction by the learned Magistrate on 22.08.2016 and after re-submission not chosen to number. In the order, dt.03.02.2017 in the revision supra, this Court observed as:-

“Either the learned Magistrate concerned having local jurisdiction or the Chief Judicial Magistrate can take cognizance if at all on the application of the accused pointing out lack of jurisdiction from the concerned Magistrate, the Magistrate has to return to the concerned Court and otherwise, the Chief Judicial Magistrate may take cognizance and even make over to any Court if not taken up for trial itself and what the circular instructions show is continuation of Special Courts for Trial of Election related offences for general elections during 2014 and from that Circular, there is nothing to show the same is extended for subsequent elections other than the General Elections, 2014.

Having regard to the above and to resolve the controversies, this Court feels it just to direct the Chief Judicial Magistrate, concerned, to take cognizance and

¹ AIR 2012 SC 521

make over the case to the concerned Court if at all including to the learned Mobile Magistrate for proceeding according to law.”

3. It appears the cognizance was taken by the Chief Judicial Magistrate. The docket proceedings before the Chief Judicial Magistrate are concerned, as per the revision order supra, there is a direction to take cognizance and thereby taken on file and made over to the Mobile Magistrate. The present impugment is against said cognizance and summoning, leave apart the Transfer Criminal Petition filed seeking to transfer the case to the State of Andhra Pradesh where there is a Designated Court.

4. In fact on perusal of the impugned order of the learned Chief Judicial Magistrate in taking cognizance no way shows compliance of mandatory requirements of Sections 200 to 202 CrPC. It is only thereafter either dismissal of the complaint for no any cognizable offences made out particularly within the jurisdiction to take cognizance or if otherwise cognizable offences made out with having jurisdiction of issuing summons as contemplated by Section 204CrPC. However, without recording sworn statement which is mandatory for the complainant is not a public servant, the learned Chief Judicial Magistrate should not have taken cognizance. Thereby, the very order is liable to be set aside. That is not the be all and end all to relegate the matter to the learned Chief Judicial Magistrate, Karimnagar, for the State of Telangana, as for the offences against the M.L.As. and the M.Ps, etc., there is a Designated Court at Nampally for the State of Telangana and the case was already made over by the learned Special Mobile Magistrate, Karimnagar to the Designated Court-cum-Metropolitan Sessions Judge-cum-Special Sessions Judge, Nampally, Hyderabad. That is also not end of the issue as the accused-petitioner is contending in impugning the order saying there is no jurisdiction for the Court to take cognizance and to try within the State of Telangana but for if at all otherwise there are merits within the State of Andhra Pradesh where there is a designated Court for the State of Andhra Pradesh and thereby filed the transfer petition.

5. Once such is the case and from the case is pending before the learned Metropolitan Sessions Judge (a designated Court), renumbering the C.C.No.1 of 2017 as C.C.No.41 of 2018, the same is set aside by reverting the clock back to the pre-cognizance stage of the complaint filed and if at all there is any cause of action arises within the State of Telangana and the designated Court got jurisdiction then to entertain the same as the pre-cognizance complaint to proceed therefrom as per law, else to return the complaint to the complainant for his presentation before the concerned Court having jurisdiction with the State of Andhra Pradesh, for its proceeding according to law and as per own merits.

6. With these observations, the CrI.P.No.4544 of 2017 is partly allowed to the above extent and the Tr.CrI.P.No.248 of 2018 is closed for no more orders are required.

Miscellaneous petitions, pending if any in these two petitions shall stand closed.

Date:03.01.2019
vvr

Dr. B.SIVA SANKARA RAO J,