

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL REVISION CASE No.2344 of 2018

% Dated 29.01.2019

Mr. Rajesh Kumar, S/o.K. Nagabhushan Rao,
Aged: about 46 years, Occ: Associate Director,
SCM, R/o.Pent House, Land Mark Towers,
Miyapur and two others.

....Petitioners

VERSUS

\$ State of Telangana,
Rep by its Public Prosecutor,
High Court of Judicature at Hyderabad
For the State of Telangana and Andhra Pradesh,
Hyderabad and another.

... Respondents

! Counsel for Petitioners : Sri Avinash Desai

^ Counsel for Respondent : Public Prosecutor (TS)

< GIST:

> HEAD NOTE:

? CITATIONS:

1. MANU/AP/0653/2010
2. MANU/AP/1796/2014 = 2014 (2) ALD (CrI.) 674
3. AIR (36) 1949 All. 483 (FB)
4. AIR 2012 SC 521
5. (1996) 11 SCC 557
6. (2014) 2 SCC 62

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**CRIMINAL REVISION CASE No.2344 of 2018****ORDER :**

The petitioners are the accused in Crime No.666 of 2018, dated 23.07.2018, registered by the S.H.O., Miyapur, for the offences punishable under Sections 504 and 506 IPC. Both the offences are non-cognizable and permission of the Magistrate is a pre-requisite for registration of the crime and investigation from the very wording of Section 155 Cr.P.C. with reference to Section 2 sub-section (1) Cr.P.C. where it defines non-cognizable offence means an offence for which and a non-cognizable case means a case in which a police officer has no authority to arrest without warrant.

2. Section 155 Cr.P.C. for more clarity reads as follows:

155. Information as to non- cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.

3. What mainly provided by sub-sections 1 and 2 of Section 155 Cr.P.C. supra is the duty of the police officer, who received information of a non-cognizable offence to enter or cause enter the substance in the book to be kept in the police station (police diary) in the prescribed format and refer the informant to the Magistrate and it is also with a rider saying no police officer shall investigate a non-cognizable offence without the order of a Magistrate having the power to try to such case or to commit the case for trial. So, the power to investigate is only from the permission of the Magistrate, who got right to take cognizance. Even Section 2(l) Cr.P.C. only bars the arrest and not the investigation or registration of the crime. In fact, registration of crime is different from investigation and what sub-section 2 of Section 155 Cr.P.C. supra bars investigation and not registration of a crime. Without going into the controversy, suffice to say from the above legal position, it is a pre-requisite for a police officer to investigate a crime to obtain permission of the concerned judicial Magistrate. The police in the case on hand by filing a memo of the S.H.O., Miyapur, sought permission to investigate into the report of the *de facto* complainant and to file final report under Section 173 Cr.P.C., though used the word as charge sheet. They assigned several reasons including the gist of the report of the *de facto* complainant Smt. U.K. Rajya Laxmi of House No.402,

Prashanthnagar, Miyapur (not Serlingampally as referred in the cause of the 2nd respondent). Needless to say, notice taken to the Miyapur address referred supra twice returned unclaimed and ultimately delivered is a sufficient service to the 2nd respondent in the present impugnement of the so-called permission of the learned Magistrate on the said memo of the police to accord permission to investigate under Section 155(3) Cr.P.C.

4. The docket order of the learned Magistrate on the said police memo from the note put up by the office of the learned Magistrate on 23.07.2018 reads that the petition filed by the S.H.O., Miyapur Police Station, praying the Court to accord permission to non-cognizable offence under Section 155 Cr.P.C. and submitted. There is nothing legible from the Magistrate as to he put his signature simply or accorded even any permission with no any wording of accorded permission. It is only a simple stroke of pen appearing as if signature of the learned Magistrate and it no way shows even use of the words perused the record and accorded permission, which is a pre-requisite.

5. The contentions in the present petition by the accused impugning the said so-called order of the learned Magistrate is that the order of the Magistrate must be a reasoned one, out come of application of judicial mind, for the reason according of permission to investigate a non-cognizable offence is not mandatory, but for to exercise the discretion to permit or not from the wording of Section 155(2) Cr.P.C. The learned counsel placed two expressions of this

Court in this regard. In one of the expressions in **Sajjal Agarwal v. The State of A.P., rep. by its Public Prosecutor, A.P. High court and another**¹ in Criminal Petition No.4442 of 2009, it is observed at para 10 that incase a police officer or a complainant approaches the Magistrate for permission under Section 155(2) Cr.P.C., it is not incumbent on the Magistrate to grant the permission invariably. It is open to the Magistrate either to grant permission or refuse to grant permission. When there is such discretion vested in the Magistrate, it is desirable that the Magistrate should give reasons for empowering a police officer to investigate a non-cognizable case, so that an aggrieved party will be in a position to question the same in higher Courts and will be in a position to know for what reasons his application was considered or not considered. It is observed that the learned Magistrate should not be casual in granting permission under Section 155(2) Cr.P.C. simply because a police officer requested for such permission. In the other expression in **S. Purnachandra Rao v. State of Andhra Pradesh**², referring to a full Bench judgment of the Allahabad High Court in **Shyam Lal Sharma v. King Emperor**³ besides **Tilaknagar Industries Ltd., and others v. State of A.P.**⁴, it is observed that from the combined reading of Section 156(3) Cr.P.C. and 155 (2) Cr.P.C., there shall be application of mind to the facts of the case by the Magistrate to accord permission to investigate, though

¹ MANU/AP/0653/2010

² MANU/AP/1796/2014 = 2014 (2) ALD (Crl.) 674

³ AIR (36) 1949 All. 483 (FB)

⁴ AIR 2012 SC 521

not necessary for the Magistrate to pass a reasoned order. The order should contain some information showing application of mind to the case. It also referred from one of the counsel before that Court placed reliance the expression of the Apex Court in **Keshav Lal Thakur v. State of Bihar**⁵ of a registration of crime and filing of the report in a non-cognizable offence under Section 31 of the Representation of the People Act that was accepted when impugned observed that in view of the definition of Section 2(d) Cr.P.C. of complaint, the police can file final report relating to a non-cognizable offence to treat the same as a complaint.

6. Here, it is not the case, particularly the crime is under investigation and no charge sheet filed. Further, the very impugment is, there is no any order of the Magistrate. As discussed supra, the Magistrate simply put his signature and no order passed by application of mind as to atleast what is a pre-requisite of perused the requisition of the police containing the contents of the report and from its perusal accorded any permission. In the absence of which and there is no order even according permission atleast for the superior Court if otherwise sustainable for not a ground to quash for mere non-assigning of reasons from the expression of the Constitution Bench of the Apex Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases**⁶. Here, as referred supra, the Magistrate did not pass any order even according permission, but for simply put his signature,

⁵ (1996) 11 SCC 557

⁶ (2014)2 SCC 62

thereby, the said order is unsustainable and duty of this Court to subserve the ends of justice by reverting the clock back to restore the police requisition to pass an order by the learned Magistrate to accord or not to accord permission giving reasons with reference to the contents of the report. The other ground of defence urged herein as defences left open.

7. With these observations, the criminal revision case is allowed and reverting clock back to restore the police requisition to pass an order by the learned Magistrate.

Miscellaneous petitions pending, if any, shall stand closed.

29th January 2019

L.R. Copy to be marked – Yes.

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Dr. B. SIVA SANKARA RAO, J