

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 12577 of 2017

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. challenging the order taking cognizance against the petitioners/A2 and A6 in C.C.No.503 of 2015 on the file of the 1st Additional Judicial Magistrate of First Class, Nizamabad, for the offence punishable under Section 498-A IPC.

2. The circumstances which lead to filing of the present Criminal Petition are as under:

Originally a case in Crime No.36 of 2014 of Women Police Station, Nizamabad, came to be registered against A.1 to A.6 for the offence punishable under Section 498-A IPC, basing on the complaint lodged by the second respondent/*de facto* complainant. In the said complaint, it is stated by the second respondent that herself and A.1 (Chuncha Promod Kumar) fell in love since one year and on 28.07.2014 they both got married at Sri Lakshmi Narsimha Temple, Janakampet. After marriage, they both went to Hyderabad and stayed for one day in Swagath Hotel, Hyderabad. Thereafter, A.1 told the 2nd respondent that after delivery of his sister, he would take her

home after informing his parents. But, he did not take her to his house. The 1st petitioner (A2), who is the brother-in-law of A-1, told the 2nd respondent that they want to get the marriage of A.1 with another girl and that he also threatened her not to approach Police. Later, she lodged a report before the Police, which was compromised and she was taken by A1 to Medak. They lived happily for about three months and thereafter both side elders discussed and decided to perform the marriage again to them in the presence of elders. Her marriage was performed with A.1 on 09.02.2015 and she stayed at her in-laws house at Nandipet, Nizamabad up to 3rd March, 2015. Due to ill-health, she went to her parent's house and later she asked A.1 to take her to Medak, but he said that first she has to meet his parents and then only he will take her to Medak. On 09.03.2015, A.1 took the second respondent to his parents' house, at that time, her sister-in-law, mother-in-law and father-in-law started abusing her in filthy language and demanded her to get dowry, then only they would allow her to stay with her husband. When she tried to call her father, they locked her in a room, took her cell phone and assaulted her. While assaulting, her father-in-law said that he would kill her. Out of fear, she started shouting and on hearing her cries, neighbours came and when her father-in-law opened the door, she ran

away. On 11.03.2015, she complained to Mahila Police Station and on 14.03.2015 the police gave counselling to them, but till date her husband never turned up.

The Police investigated into the matter and filed a final report stating that as per the statements of LWs.4 to 9 the offence was not established against A.2 to A6 as they never involved in the family matters of the 2nd respondent/complainant, they never harassed her physically and mentally and there is no demand of additional dowry. Accordingly, the Inspector of Police, Women Police Station, Nizamabad, requested the Court to drop further proceedings against A2 to A6 and to take cognizance against A-1 for the offence punishable under Section 498-A of I.P.C. However, the learned Magistrate, by order dated 01.09.2015, took the case on file against all the six accused and issued summons to A.1 to A6. Challenging the said order of taking cognizance of the case against the petitioners/A.2 and A.6, the present Criminal Petition is filed.

3. A perusal of the material on record would show that though notice served on the second respondent on 05.02.2019, she failed to appear before the Court either in-person or through any Counsel. Hence, heard learned Counsel for the

petitioners and the learned Additional Public Prosecutor appearing for the first respondent-State and perused the material available on record.

4. It has been submitted on behalf of the petitioners that though there is no sufficient ground for proceeding further, the learned Magistrate erred in taking cognizance against the petitioners for an offence punishable under Section 498-A IPC and issued summons. It is also stated that the material available on record and also the statements of LWs.1 to 3 does not constitute the alleged offence against the petitioners and, therefore, there is no point in taking cognizance and proceeding further against the petitioners. It is further stated that the independent witnesses and neighbours of the locality, who are examined as LWs.4 to 9, have not stated anything against the petitioners and for that reason only, the investigating Officer deleted the names of the petitioners in the charge sheet. There is delay of 24 days in lodging the complaint, which itself shows that the report has been lodged after due deliberations and discussions. It is also stated that the learned Magistrate has not recorded any reasons that he is satisfied that there is sufficient incriminating material on record to proceed against the petitioners along with A.1. It is settled that the material placed

along with the charge sheet must disclose sufficient *prima facie* material to proceed against the accused and then only, the Court can exercise power under Section 190 (1) (b) of Cr.P.C. But the learned Magistrate failed to apply his mind independently on the facts emerging from the investigation and took cognizance of the case against the petitioners mechanically. It is further argued that the learned Magistrate could not have issued process against those persons, who have been shown as accused in the First Information Report but deleted from the array of accused in the charge-sheet filed by the police under Section 173 Cr.P.C.

5. On the other hand, the learned Additional Public Prosecutor, appearing for the first respondent-State contended that Section 190 Cr.P.C. gives ample power to the Magistrate to take cognizance of the case even against the persons, who are not charge sheeted by the Police and that no reasons are required to be given while taking the case on file and that there is no illegality in the impugned order.

6. Before proceeding further, it may be relevant to refer to section 190 Cr.P.C., which reads as under:

“190. Cognizance of offences by Magistrate: -

(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specifically empowered in this behalf under sub-Section (2), may take cognizance of any offence:

(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.

(2) the Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-Section (1) of such offences as are within his competence to inquire into or try.”

7. The first question that falls for consideration is whether the Court can bound by the report of the Police while taking cognizance of the case.

8. In **Uma Shankar Singh v. State of Bihar and another**¹ the Apex Court held as under:

“The Magistrate is not bound to accept the final report filed by the Investigating agencies under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities without holding any separate enquiry on the basis of the police report itself. The learned Judges proceeded to state that even if the investigating authority is of the view that no case has been made out against an

¹ (2010)9 SCC 479

accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC.”

9. From the judgment referred to above, it is clear that the Magistrate can independently apply his mind to the material on record and is not bound by the report of the Police.

10. The next question that falls for consideration is whether reasons are to be given while taking cognizance of the case.

11. In *GHCL Employees Stock Option Trust v. India Infoline Limited*² the Apex Court while issuing summons in a case arising out of a private complaint filed for the offences punishable under Sections 415, 409 read with 34 and 120-B IPC, observed as under:

“Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a *prima facie* case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.”

² 2013 (4) SCC 505

12. Similarly a three Judge Bench of the Apex Court in *Sunil Bharti Mittal v. Central Bureau of Investigation*³ while dealing with the Sections 200 to 204, 190, 173 (2) and 319 Cr.P.C. held that the words “sufficient ground for proceeding” appearing in Section 204 Cr.P.C. is of immense importance. The Court held that all these words would amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The Court further held that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is *prima facie* case against the accused, though the order need not contain detailed reasons.

13. From the two judgments referred to above, it is clear that showing application of mind is a pre-requisite at the time of taking cognizance. The order under challenge lacks reasons for coming to a conclusion as to the existence of *prima facie* case against the petitioners/A.2 and A.6. Therefore, it cannot be said that the Magistrate has totally applied his mind while issuing summons to the petitioners/A.2 and A.6, as the order under challenge is bereft of even basic reasons for taking a view different from what has been stated by the investigating

³ 2015 (4) SCC 609

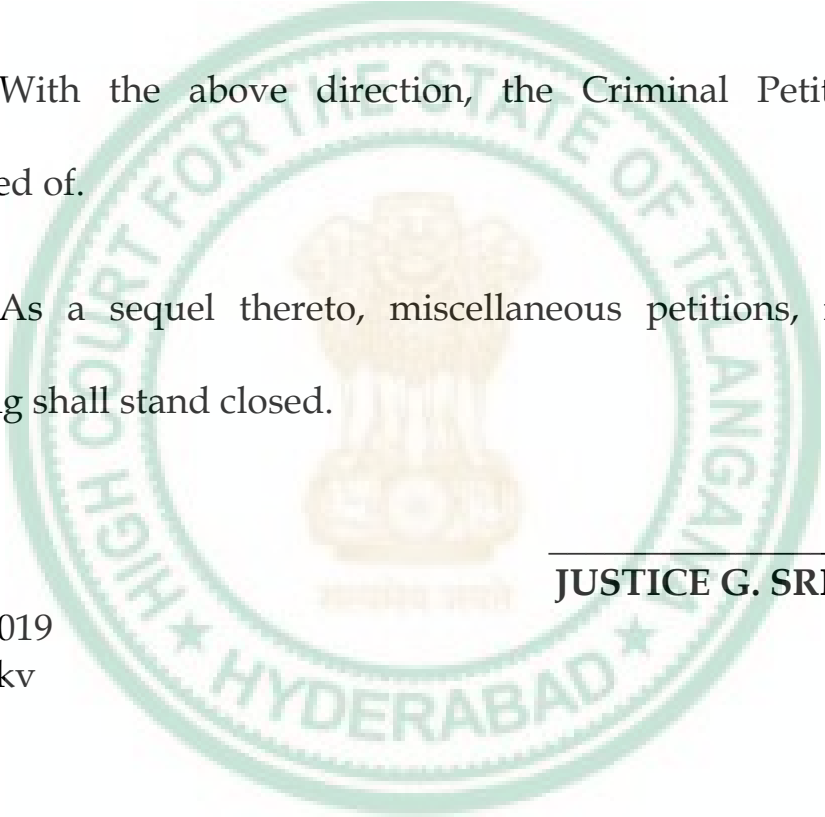
agency. It may be true that there is enough material against the petitioners for proceeding further but the same, in some form or the other, should *prima facie* reflect in the order.

14. Hence, the order under challenge is set aside and the matter is remanded back to the trial Court, directing the Magistrate to pass an order in terms of the judgments of the Apex Court referred to above.

15. With the above direction, the Criminal Petition is disposed of.

16. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

05.11.2019
Gsn/gkv


JUSTICE G. SRI DEVI

