

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.3216 of 2015

ORDER:

The petitioners herein are Accused Nos.1 and 2 in C.C.No.283 of 2012 on the file of the III-Additional Chief Metropolitan Magistrate, Hyderabad, which was taken cognizance for the offences punishable under Sections 420, 506 and 323 of I.P.C. Pending disposal of the said C.C., the petitioners filed CrI.M.P.No.113 of 2013 under Section 239 of Cr.P.C. seeking to discharge them on the ground that the F.I.R. does not disclose the commission of any cognizable offences. By an order, dated 27.11.2013, the learned III-Additional Chief Metropolitan Magistrate, Hyderabad, dismissed the said discharge petition. Aggrieved by the same, the petitioners filed CrI.R.P.No.25 of 2014. By an order, dated 18.03.2014, the learned Metropolitan Sessions Judge, Hyderabad, allowed the said revision in part, directing the trial Court to consider the material and frame a charge under Section 417 of I.P.C. instead of 420 of I.P.C. To set aside the said part of the order, dated 11.03.2014 passed in CrI.R.P.No.25 of 2014, on the file of the Metropolitan Sessions Judge, Hyderabad, the petitioners filed the present Criminal Petition.

In view of the legal issue raised in this petition, the facts of the case need not be delved.

Heard and perused the record.

Relying on the judgment of this Court in *Juvvadi Raghu and others v. State through S.H.O., P.S., Vemulawada, Karimnagar District and another*¹, learned Counsel appearing for the petitioners would submit that the police conducted investigation into non-cognizable offences without obtaining permission from the concerned Magistrate and, therefore, the charge sheet filed basing on such investigation is wholly contrary to the provisions of Cr.P.C.

Per contra, it is the submission of the learned Assistant Public Prosecutor that both the Courts below have rightly passed the impugned orders and that there is no illegality or irregularity in the impugned orders, as such there are no grounds to interfere with the same.

Before proceeding further, it would be useful to refer to Section 155 of Cr.P.C.

"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.

¹ 2006 (3) ALT (CrI) 167 (A.P.)

(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."

The said provision makes it clear, that the S.H.O. shall refer the informant to the Magistrate, thereby, making clear that it is for the informant to seek the orders of jurisdictional Magistrate for issue of direction to the police for investigation of the case. The Magistrate, on being approached by the informant, if orders investigation, the S.H.O. concerned would get jurisdiction to register the crime, investigate the matter and not otherwise.

In the present case, the police have acted contrary to sub-section (1) of Section 155 of Cr.P.C. as the learned Magistrate has not issued any proceedings permitting the S.H.O. to register the crime and investigate the matter. In view of the prohibition contained in sub-section (2) of Section 155 of Cr.P.C., the investigation made and the consequential charge sheet filed for the offences under Sections 323, 417 and 506 of I.P.C. and taking cognizance of those offences against the petitioners are absolutely illegal.

In ***V.Sudhakar v. R.Rama Mohan Rao***² this Court held as under:

² (2005) 1 ALT (Crl.) 170 (A.P.)

“As per Section 155 Cr.P.C., if information with regard to non-cognizable offences is given to an officer in-charge of a police station he has to enter the substance of that information in a book to be kept in the form prescribed by the State Government, and refer the informant to the Magistrate. In this case, there is nothing on record to show that the police followed such procedure and obtained permission from the Magistrate to investigate into the case. Therefore, police taking cognizance and investigating into a non-cognizable offence without the permission of the Magistrate, is wholly contrary to the provisions of Cr.P.C. and is vitiated. Therefore, the proceedings against the petitioner in C.C.No.464 of 2002 are liable to be and hence are quashed.”

In view of the judgments referred to above and for the aforesaid reasons, this Court is of the opinion that the aforesaid proceedings initiated against the petitioners are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioners in C.C.No.283 of 2012 on the file of the III-Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE G. SRI DEVI

20.04.2021
Gsn/gkv

