

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.4203 OF 2017****ORDER:**

This Criminal Petition is filed under Section 482 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking to quash the proceedings against the petitioners who are arrayed as Accused Nos.1 to 6 in C.C.No.278 of 2016 on the file of Judicial Magistrate of First Class at Bodhan, Kamareddy District.

2. Heard the learned counsel for the petitioners/Accused Nos.1 to 6 and the learned Additional Public Prosecutor for the State-Respondent. Perused the material on record.

3. The facts of the case in brief are that the 2nd respondent/*de facto* complainant filed a private complaint against the petitioners herein which was referred to the police for the purpose of investigation. The police registered the F.I.R. as 375 of 2015 and investigated the case. After completion of investigation, police filed a final report/charge sheet against the 1st petitioner/Accused No.1 only stating that the involvement of petitioner Nos.2 to 6/Accused Nos.2 to 6 was not proved and there is no sufficient

evidence to make them as Accused. Accordingly, the proceedings against Accused Nos.2 to 6 were dropped. The said charge sheet was numbered as C.C.No.365 of 2015. Thereafter, the *de facto* complainant filed a 2nd complaint on the very same allegations before the concerned Court.

4. It is an admitted fact that after the first complaint was filed, the couple did not live together and there are no other allegations in the second complaint apart from what were stated in the first complaint. The second complaint is also a private complaint which was taken cognizance by the learned Magistrate. The learned Magistrate having examined the complainant passed cognizance order dated 08.12.2016 as follows:

“ Complainant is present, examined and recorded her statement. Cognizance is taken for the offence U/s.498-A IPC, Sec.4 of D.P. Act against A1 to A6. Issue summons to A1 to A6 on payment of process. Register the C.C. Call on 10.01.2017.”

5. Learned counsel for the petitioners would submit that the course left open to the respondent No.2/*de facto* complainant is to

file a protest application in C.C.No.365 of 2015 and not file a separate private complaint.

6. On the other hand, the learned counsel appearing for the *de facto* complainant submits that aggrieved by the said final report of not charge sheeting Accused Nos.2 to 6, a separate complaint was filed. Though there is an error in filing the complaint against Accused No.1, the said error can be overlooked. It is for the Court to conduct trial and conclude whether the case is made out or not.

7. When the police have filed final report stating that no case was made out against Accused Nos.2 to 6, the procedure to be adopted by the *de facto* complainant is to file an application questioning the final report filed by the police, but the 2nd respondent has filed another complaint without taking any action in her first complaint.

8. As seen from the cognizance order, there are no reasons mentioned by the learned Magistrate for taking cognizance of the offences against the Accused herein. For the very same allegations, C.C.No.365 of 2015 is already pending against Accused No.1. The

procedure adopted by the learned Magistrate in taking cognizance against the petitioners/Accused Nos.2 to 6 without giving reasons in the present facts and circumstances of the case is incorrect. For the said reasons, the cognizance order dated 08.12.2016 against the Accused Nos.2 to 6 is hereby set aside. It is needless to say that the respondent No.2 has recourse under law to proceed against the petitioners herein.

9. Accordingly, the Criminal Petition is disposed off.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 03.11.2022
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