
(2015) 06 AP CK 0094

In the Andhra Pradesh High Court

Case No : Criminal P No. 3823 of 2015

Gadu Narayanarao and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 226, 227, 228

Citation : (2015) 2 ALD(Cri) 668 : (2015) 3 ALT(Cri) 440 : (2016) 1 Crimes 545

Hon'ble Judges : B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : M. Krishna Rao, Counsel, for the Appellant

Judgement

Dr. B. Siva Sankara Rao, J.—This is a criminal petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") by the petitioners/ A1 and A2 requesting to quash the proceedings against them in PRC No. 2 of 2014 on the file of the Court of the learned Judicial First Class Magistrate, Rajam. Heard the learned Counsel for petitioners/A1 and A2 and also the first respondent herein-State represented by the Public Prosecutor, before admission and before ordering any notice to the second respondent/de facto complainant. Perused the material on record.

2. It is needless to say that the proceedings are yet to be committed for trial before the Sessions Court. As laid down by the apex Court in *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, and in *Raj Kishore Prasad Vs. State of Bihar and another*, , the committal Magistrate is almost a Post Office duty after taken cognizance under Section 190 of Cr.P.C., of the case being committed as triable by Court of Sessions; though while taking cognizance even in such cases, the Magistrate is not bound by the police final report showing prima facie accusation against all or some of accused and or showing no case made out and the case is referred thereby with notice to de facto complainant as well explained the scope by the subsequent expenses following *India Carat's* case (supra) and explaining *Rajkishore Prasad's* case (supra), like in *Uma Shankar Singh Vs. State*

of Bihar and Another, and particularly by the Constitutional Bench in Dharam Pal and Others Vs. State of Haryana and Another, , differing with Moti Lal Songara Vs. Prem Prakash @ Pappu and Another, , while answering the reference on divergent opinions and Dharam Pal's case (supra), later followed in Sunil Bharti Mittal Vs. Central Bureau of Investigation and also by this Court in Moraboina Venkatesu Vs. The State of Andhra Pradesh, . When once the matter is being committed to the Court of Sessions, the Sessions Judge has to take cognizance under Section 193 of the Code and there is an opportunity to the petitioners/accused under Section 227 of the Code either by filing an application or even by oral submissions or any grounds to urge for discharge, else to frame charge within the purview of Sections 226 to 228 of Cr.P.C., from the prosecution material as laid down in State of Orissa Vs. Debendra Nath Padhi, , by left open the remedy therefor, the petition is disposed of as the material placed falls short even to admit the application under Section 482 of Cr.P.C.

3. It is left open to the petitioners in the event of framing of any charges under Section 228 of the Code for proceeding with trial, after answering the same, if unable to attend both for the day-to-day trial contemplated by Section 309 of the Code, to file an application under Rule 37 of the Criminal Rules of Practice to consider on own merits and with necessary conditions. Miscellaneous petitions pending, if any, in the criminal petition shall stand closed.