
(2014) 11 AP CK 0016

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 2496 of 2013

Jayasri Singh

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 200, 200, 201
Dowry Prohibition Act, 1961 — Section 4, 6
Negotiable Instruments Act, 1881 (NI) — Section 145
Penal Code, 1860 (IPC) — Section 406, 420, 498A

Citation : (2015) 2 ALD(Cri) 130 : (2015) 3 ALT(Cri) 370

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

Bench : Single Bench

Advocate : G.V. Raghava Reddy, Advocate for the Appellant; V.R. Reddy Kovvuri, Advocate for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.—This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C by the petitioners-accused 2 to 4, having been aggrieved by the order of the learned XIII Additional Chief Metropolitan Magistrate, at Hyderabad, in CrI.M.P. No. 3877 of 2013 in C.C. No. 149 of 2013 (private complaint case) dated 23.10.2013.

2. The contention of the learned counsel for the revision petitioners is that the revision petitioners are the accused Nos. 2 to 4 in C.C. No. 149 of 2013 and the learned Magistrate should have seen that once the police filed the final report from the investigation by chargesheeting only A.1 out of the 4 accused shown in the FIR, by non-chargesheeting or deleting from array of A.2 to A.4 who are the revision petitioners herein, the remedy of the complainant is to file a private complaint case for proceeding with as a protest petition for so taking as a private complaint that too after, recording sworn statement of de facto-complainant and statements of the witnesses, if any, under Section 200 to 204 Cr.P.C. and but for that or during trial under Section 319 Cr.P.C. as additional accused, there is no power to the learned Magistrate and thus taking of cognizance against these

revision petitioners by the learned Magistrate on the final report of police even not shown them by police as accused is Judge is illegal and not sanctioned by law that too, only on the sworn affidavits filed and not by recording as contemplated by Section 200 of Cr.P.C. Hence, to set aside the impugned order.

3. Whereas, it is the contention of the learned counsel for the 2nd respondent/ defacto-complainant that the learned trial judge is right in taking cognizance within his power under Section 190 Cr.P.C. for the case triable before the same Court and not even a committal proceedings, hence, to dismiss the revision.

4. Now the points that arise for consideration are:

"1. Whether the impugned order of the learned XIII Additional Chief Metropolitan Magistrate, at Hyderabad, in CrI.M.P. No. 3877 of 2013 in C.C. No. 149 of 2013 (private complaint case) dated 23.10.2013 is unsustainable, if so, with what observations?

2. To what result?"

Point No. 1:

5. It is important to note that, out of the 4 accused arrayed, the police having registered the crime against them for the offences punishable under Sections 498-A, 420, 406 of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, after investigation, filed the final report under Section 173 of Cr.P.C. by showing A.1 as sole accused by non-chargesheeting the other accused 2 to 4- the revision petitioners. It is therefrom, the learned Magistrate has taken cognizance on the final report only against the A.1.

6. In fact, the Magistrate is competent to take cognizance including those non-chargesheeting accused if at all from perusal of the chargesheet and investigation material relied on by the prosecution as the Magistrate is not bound by the referred report of the police. It is no doubt the complainant got a right of hearing before the Magistrate while considering the police report in so far as against the accused of FIR not chargesheeted to record so or even against the cahrgesheeted not to take cognizance as held by the Apex Court in Ajay Kumar Parmer v. State of Rajasthan, at para-20. It is as laid down in Motilal Songara v. Prem Prakash @ Pappu that Magistrate is not bound to accept final report filed by the Investigating Officer and he can take cognizance and issue process against the person though exonerated by the investigating agency. It is for the Court to accept or reject the final report in part or toto after considering the material before it. Victim of the offence has right to get justice as accused.

7. However, instead of so doing if at all there is a material, the learned Magistrate has taken cognizance only against the chargesheeted sole accused-A.1 by directing to issue process for his appearance and not mentioned anything so far as non-chargesheeted accused 2 to 4 of the First Information Report.

8. As such, once that stage is exhausted, only remedy to the de facto-

complainant is to file protest petition even in the form of private complaint such protect petition the Magistrate can take as a private complaint as in case of a private complaint filed under Section 200 Cr.P.C. for the offences under the Sections which are triable as a warrant case by adopting warrant cases procedure, after recording the sworn statement of the complaint and the statements of witnesses present or on summoning, if any, vide *Rosy v. State of Kerala*.

9. However, there are no sworn statements recorded as contemplated by Section 200 of Cr.P.C. but relied on the sworn affidavits filed by the complainant and other witnesses. It is not like a specific provision under Section 145 of the Negotiable Instruments Act, with non-obstante clause notwithstanding anything contained in the Cr.P.C. to accept the affidavit in evidence or by virtue of the expressions under the N.I. Act extending the filing of affidavit to accept as sworn statement of pre-cognizance stage vide decisions in *Indian Bank Association v. Union of India* and *Gulam Hider Ali Khan v. Managing Partner, Shirdi Sai Finance*.

10. Having regard to the above, the taking of cognizance on the sworn statements of the de facto-complainant and other witnesses of the complainant instead of recording the sworn statements by the Magistrate is since not sanctioned by law, the order is liable to be set aside. There is no need to go into the scope of Section 319 of Cr.P.C. as it is not the stage, where trial is commenced against the sole accused and from said evidence it is showing complicity of other accused.

11. In the result, Revision is allowed by setting aside the impugned dismissal order of the learned Magistrate in CrI.M.P. No. 3877 of 2013, dated 23.10.2013. The learned Magistrate is required by this order to subserve the ends of justice to record afresh the sworn statements of the de facto complainant and other witness present or on being summoned them for said purpose and then to decide on own merits for taking cognizance against A.2 to A.4 or not. Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.