

(2011) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3455 of 2010

K. Nivedan and Others

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 210, 244, 244(2)

Citation : (2011) 2 ALD(Cri) 17

Hon'ble Judges : Raja Elango, J

Bench : Single Bench

Advocate : S.V. Bhatt, for the Appellant; V. Raja Manohar, Additional Public Prosecutor for R 2, for the Respondent

Judgement

Raja Elango, J.—Petitioners preferred this Criminal Petition seeking to quash the order passed by the learned Additional Judicial First Class Brief facts of the case are as follows:

The second Respondent-de facto complainant joined as E.1 Cadre Duty Medical Officer in BHEL and promoted to E2 Cadre w.e.f.

On the basis of the said complaint, a case in crime No. 347 of 2009 is registered against the Petitioners for the offence un(sic)

2. The learned Magistrate after perusal of the said petition, passed the following docket order on 10.02.2010:

Complainant present. Heard the counsel for the complainant. Call for records as prayed for. Petition is accordingly all In pursuance to the said docket order, the learned Magistrate also addressed two letters in Dis. Nos. 577 and 578 of 2010 to t(sic) The said order is under challenge in this Criminal Petition.

3. The learned Counsel appearing on behalf of the Petitioners submitted the following points for consideration:

When the crime is registered and investigated by the Police and also referred as

"mistake of fact", the learned Magistrate s(sic) Per contra, the learned Senior Counsel for the complainant submitted that there is no need for the Magistrate to pass any fi(sic) Heard the rival contentions.

4. The word "cognizance" is nowhere explained in the Code of Criminal Procedure or any other Act. On perusal of various provis(sic) But, in the present case, the learned Magistrate has not passed any order on the basis of the final report filed by the inve(sic) Section 244 Code of Criminal Procedure runs as follows:

244. Evidence for prosecution.- (1) When on any warrant-case instituted otherwise than on a police report, the accused appea(sic)

(2) The Magistrate may, on the application of the prosecution, issue a summon to any of its witnesses directing him to atte(sic)

5. The above said provision of law clearly indicates the words "the accused appears or is brought before a Magistrate". In the(sic)

6. This Court is of the view that the act of invoking the provision u/s 244(2) Code of Criminal Procedure without taking cognizance is (sic)

7. Further, in the present case, the provision u/s 210 Code of Criminal Procedure is not applicable since that Section of law can be inv(sic) Petitioner herein further approached this Court to quash the crime No. 347 of 2009 on the file of the Additional Judicial Firs(sic)

8. In view of the above discussion, the present criminal petition is disposed of with the following further directions:

1) the learned Magistrate is directed to pass an order on the final report filed by the investigation agency in crime No. 347

2) the learned Magistrate is at liberty to proceed on the basis of the CFR No. 15 of 2010 filed u/s 200 Code of Criminal Procedure in a (sic)

9. Petitioners are at liberty to approach the concerned Court with appropriate application if they are aggrieved over by any o(sic)