

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY
CRIMINAL REVISION CASE No.1350 OF 2024

ORDER:

This Criminal Revision Case is filed assailing the docket Order dated 07.11.2024 passed in CrI.M.P.No.191 of 2024 by the learned Judicial Magistrate of First Class, Special Mobile Court, Kurnool, in crime No.122 of 2024 of Kurnool Taluk police station.

2. Originally, pursuant to a police report lodged by the petitioner, a case in crime No.122 of 2024 of Kurnool Taluk police station was registered against 2nd respondent herein, for the offences punishable under Sections 417 and 420 of the Indian Penal Code, 1860 (for short, 'IPC'). After completion of investigation in the aforesaid crime, police laid charge sheet on 07.08.2024, and the same was taken cognizance by the learned Magistrate for the offences under Sections 417 and 420 IPC. On 21.08.2024, the petitioner/defacto complainant made a representation to the Superintendent of Police, Kurnool, requesting to add Section 376 IPC in addition to

Sections 417 and 420 IPC in the aforesaid crime. Thereafter, as no action was taken by the police, she lodged a private complaint before the learned Magistrate on 02.09.2024 praying to take cognizance for the offences punishable under Sections 376, 417 and 420 IPC. The learned Magistrate, vide Order dated 07.11.2024, returned the said private complaint with impugned endorsement that when once Magistrate has taken cognizance, the question of taking cognizance again of the charge sheet is not warranted. Challenging the same, the present Criminal Revision Case is filed by the petitioner/defacto complainant.

3. Heard the learned counsel for the petitioner and the learned counsel for 2nd respondent. Perused the record.

4. Learned counsel for the petitioner submitted that the allegations in the police report lodged by the petitioner would disclose a *prima facie* case for the offence punishable under Section 376 IPC, but, police registered the case only for the offences under Section

417 and 420 IPC and filed charge sheet for the aforesaid offences. He further submitted that the petitioner has been requesting the police to add Section 376 IPC and also submitted a representation, dated 21.08.2024 to the Superintendent of Police, Kurnool, but, since no action has been taken, the private complaint has been lodged.

It is his submission that when a private complaint has been filed, it is the bounden duty of the Magistrate to proceed in accordance with the procedure laid down under the CrPC, but, the learned Magistrate erred in returning the private complaint *vide* the impugned endorsement, dated 07.11.2024.

5. On the other hand, it is the contention of the learned counsel for 2nd respondent that when once the learned Magistrate has taken the cognizance on the report filed by the Investigating Officer, on the same set of allegations a private complaint is not maintainable and accordingly, the learned Magistrate rightly returned

the private complaint filed by the petitioner and there are no grounds to interfere with the order.

6. Heard. Perused the record.

7. A perusal of record goes to show that basing on a report lodged by the petitioner, Kurnool Taluq Police registered a case in Crime No.122 of 2024 against 2nd respondent herein for the offences punishable under Section 417 and 420 IPC and after completion of investigation, filed charge sheet for the said offences and the same was taken on file by the learned Magistrate as Calendar Case No.1637 of 2024 on the file of the learned Judicial Magistrate of First Class, Special Mobile Court, Kurnool. A perusal of record further goes to show that during pendency of investigation in the aforesaid crime, the petitioner made a representation, dated 21.08.2024 to the Superintendent of Police requesting to add Section 376 IPC in the aforesaid crime. But, as police filed charge sheet in the aforesaid crime without including Section 376 IPC, she filed the private complaint.

8. It is well settled that once a private complaint is filed, depending upon the facts of the case, the Court can proceed on the basis of the complaint and follow the procedure prescribed under Sections 200 and 202 CrPC. In the case on hand, the petitioner herein/*de facto* complainant is contending that the allegations in the police report lodged by her would attract a *prima facie* case for the offence punishable under Section 376 IPC also and during pendency of investigation in the said case, she made a representation to the Superintendent of Police concerned, to add the said Section. As the same is not done by the police, who filed charge sheet for the offences under Sections 417 and 420 IPC only, it led to filing of the present private complaint.

9. Therefore, in the circumstances of the case, the Magistrate ought to have followed the procedure laid down under Sections 200 and 202 CrPC on the private complaint lodged by the petitioner herein/*de facto* complainant and thereafter, ought to have proceeded in accordance with law.

10. Accordingly, the Criminal Revision Case is allowed, setting-aside the impugned docket order, dated 07.11.2024 passed in CrI.M.P.No.191 of 2024 by the learned Judicial Magistrate of First Class, Special Mobile Court, Kurnool, in crime No.122 of 2024 of Kurnool Taluk police station. The matter is remanded to the learned Magistrate with a direction to proceed on the private complaint lodged by the petitioner in accordance with Sections 200 and 202 CrPC. It is made clear that if, upon such inquiry, the learned Magistrate feels that a *prima facie* case for the offence punishable under Section 376 IPC has been made out, the proceedings arising out of the private complaint can be clubbed with Calendar Case No.1637 of 2024 and committed to the Court of Session.

Miscellaneous petitions pending, if any, in the Criminal Revision Petition shall stand closed.

(K.SREENIVASA REDDY,J.)

19.02.2025.
DRK

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