

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.10682 OF 2022

Between:

Ragamgari Sai Kumar

... Petitioner

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 08.02.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CrI.P.No.10682 of 2022

% Dated 08.02.2023

Ragamgari Sai Kumar

... Petitioner

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another

... Respondents

! Counsel for the Petitioner: Sri K.Ratna Sagar

^ Counsel for the Respondents:

- 1) Sri S.Sudershan
Additional Public Prosecutor for R1
- 2) Sri S.Srinivasachary,
Learned counsel for R2

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10682 OF 2022****O R D E R:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner/Accused to quash the proceedings against him in C.C.No.2524 of 2022 on the file of XI Additional Metropolitan Magistrate, Cyberabad at Rajendranagar, Ranga Reddy District. The offences alleged against him are under Sections 323, 504 and 506 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent – State.

3. The 2nd respondent filed a complaint alleging that this petitioner has criminally trespassed into the premises and abused the 2nd respondent in most filthy language and threatened her. For the said reason, the Police registered the case under Sections 323, 506 and 506 of the IPC and after investigation filed charge sheet for the said offences.

4. Learned counsel appearing for the petitioner would submit that the said provisions are non-cognizable and the Police have

not taken permission from the concerned Magistrate as required under Section 155(2) of Cr.P.C. for investigating into non-cognizable offences and consequently for filing the charge sheet under the said provisions.

5. On the other hand learned counsel appearing for the 2nd respondent would submit that petition was already filed before the concerned Magistrate under Section 216 of Cr.P.C. for alteration of charge which is pending adjudication. In the said circumstances, petition has to be dismissed.

6. Section 216 of Cr.P.C reads as follows;

“216. Court may alter charge.—(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is

obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

7. Section 155(2) of Cr.P.C prohibits any Police Officer from investigating into non-cognizable offences without order of the Magistrate and permission is also required for committing a non-cognizable case to trial. In the present case, the Police had neither sought permission for investigation nor for filing the charge sheet committing the case for trial. Crime was registered and charge sheet also filed for the said offences under Sections 323, 504 and 506 of the Indian Penal Code which are non-cognizable according to first schedule of Cr.P.C.

8. The Police committed an illegality by not following the procedure prescribed under Section 155(2) of Cr.P.C. Subsequently filing an application under Section 216 of Cr.P.C. will not ratify the illegality committed. The learned Magistrate has taken cognizance of non-cognizable offence when the police has not followed the procedure. Taking cognizance itself is bad in law and the consequent filing of Section 216 Cr.P.C. petition to frame a charge for a cognizable offence to circumvent the illegality is unacceptable.

9. In the said circumstances, the Criminal Petition is allowed and the proceedings in C.C.No.2524 of 2022 on the file of XI

Additional Metropolitan Magistrate, Cyberabad at Rajendranagar, Ranga Reddy District, are hereby quashed. However, this order will not preclude the 2nd respondent from filing any private complaint, if so advised.

Miscellaneous applications pending, if any, shall stand closed.

Date: 08.02.2023
tk

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10682 OF 2022

Dt. 08.02.2023

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