



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU
CRIMINAL REVISION CASE NO: 1650 OF 2008

Between:

1. DUNGA SAROJINI W/o. M. Krishna Rao
Head Mistress, Z.P. High School
R/o. Pasuvullanka Village,
I. Polavaram Mandal,
East Godavari District.

...PETITIONER(S)

AND:

1. STATE PF A.P. REP. BY P.P & 4 OTHERS Rep. by its Public Prosecutor
High Court of A.P. Hyderabad.
2. Dhulipudi Chakram s/o. Venkanna
Business
R/o. Pasuvullanka Village,
I. Polavaram Mandal,
East Godavari District.
3. Dhulipudi Rama Krishna S/o. Venkanna
Business
R/o. Pasuvullanka Village,
I. Polavaram Mandal,
East Godavari District.
4. Dhulipudi Satyanarayana S/o. Venkanna
Business
R/o. Pasuvullanka Village,
I. Polavaram Mandal,
East Godavari District.
5. Dhulipudi Rama Krishna S/o. Satyanarayana
Business
R/o. Pasuvullanka Village,
I. Polavaram Mandal,
East Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): V RAJA MANOHAR

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL REVISION CASE No.1650 OF 2008**Between:**

Smt. Dunga Sarojini, W/o M. Krishna Rao,
Aged 38 years, Occ: Head Mistress, Z.P. High School,
R/o Pasuvullanka Village, I. Polavaram Mandal,
East Godavari District. Petitioner/
Defacto complainant.

Versus

1. The State of A.P.,
Rep. by its Public Prosecutor,
High Court of A.P. Respondent/complainant.
2. Dhulipudi Chakram S/o Venkanna,
Aged 49 years, Occ: Business,
R/o Pasuvullanka Village, I. Polavaram Mandal,
East Godavari District.
3. Dhulipudi Rama Krishna S/o Venkanna,
Aged 47 years, Occ: Business,
R/o Pasuvullanka Village, I. Polavaram Mandal,
East Godavari District.
4. Dhulipudi Satyanarayana S/o Venkanna,
Aged 52 years, Occ: Business,
R/o Pasuvullanka Village, I. Polavaram Mandal,
East Godavari District.
5. Dhulipudi Rama Krishna S/o Satyanarayana,
Aged 42 years, Occ: Business,
R/o Pasuvullanka Village, I. Polavaram Mandal,
East Godavari District.
.... Respondents/Accused 1-4.

DATE OF ORDER PRONOUNCED : 28.11.2022

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the order ? Yes/No

A.V.RAVINDRA BABU, J



*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**
+ CRIMINAL REVISION CASE No.1650 OF 2008

% 28.11.2022

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East Godavari District. Respondents/Accused 1-4.

! Counsel for the Petitioner : Sri V. Raja Manohar

^ Counsel for the Respondent No.1 : Public Prosecutor

**^ Counsel for the Respondent
Nos.2 to 5** : Sri K. Chidambaram

< Gist:

> Head Note:

? Cases referred:

This Court made the following:



THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRIMINAL REVISION CASE NO.1650 OF 2008

ORDER:-

This Criminal Revision Case came to be filed by the petitioner/*defacto*-complainant under Section 397 and 401 of the Criminal Procedure Code ('Cr.P.C.' for short) as against the order in Criminal Miscellaneous Petition No.1002 of 2008 in C.C.No.11 of 2006, dated 31.10.2008, on the file of the Judicial Magistrate of First Class, Special Mobile Court, Kakinada, with a prayer to set aside the said order.

2) The facts which lead to the filing of this Criminal Revision Case, in brief, are that the petitioner is the *defacto*-complainant on whose report Crime No.1 of 2005 came to be registered originally under Section 3(1)(x) of SCs & STs (POA) Act, 1989 and Section 506 of Indian Penal Code ("IPC" for short).

3) The brief case of the petitioner according to the report lodged by her with Sub-Inspector of Police, I. Polavaram Police Station is as follows:

(i) The petitioner is a Teacher since 1998 in Z.P. High School, Pasuvullanka village. One Dulipudi Chakram S/o Dulipudi Venkanna belonged to Kapu caste and belonged to the



village of the petitioner. When an additional building under the scheme of "Sarva Siksha Abhiyam" was constructed, the amount Rs.2,50,000/- was released in favour of the Headmaster. The said person demanded the petitioner to give some amount for which she refused. After some days a cheque for Rs.40,000/- was sent in the name of her through "Sarva Siksha Abhiyam". Again Dulipudi Chakram threatened and demanded her for a sum of Rs.40,000/-, else he will see that how she would discharge the duties. On 05.01.2005 at 9-45 A.M., she was discharging her duties. The said Dulipudi Chakram, Dulipudi Rama Krishna, S/o Venkanna, Dulipudi Satyanarayana and Dulipudi Rama Krishna, S/o Satyanarayana, along with 20 others attacked her school by raising slogans abusing her in the name of caste in indecent language (actual words are edited by the Court). They threatened that if the students pursued in their school, they will become untouchable. So, they obstructed her duties, abusing in filthy language in the name of caste. They also threatened Smt. Sakile Vimala, Head Mistress, Elementary School, beside the school of the petitioner. This is the substance of the allegations in the report lodged by the *defacto*-complainant.



(ii) The Sub Divisional Police Officer, Amalapuram, conducted the investigation and at the time of remand submitted the remand report before the concerned Magistrate alleging the offence under Section 7(1)(d) of Protection of Civil Rights Act and Sections 353 and 506 r/w 34 of IPC of Polavaram Police Station. Under the above provisions of law, the accused were remanded for judicial custody. While so, on the representation of the petitioner deleting the provisions of SCs & STs (POA) Act, it appears that the investigation was entrusted to CID and ultimately the Deputy Superintendent of Police, CID, RCIU, Visakhapatnam, filed charge sheet in Crime No.1 of 2015 under Sections 353, 506 r/w 34 of IPC and Section 7(1)(d) of Protection of Civil Rights Act against A.1 to A.4 for which cognizance was taken by the learned Magistrate. There was a whisper in the charge sheet that on account of the outcome of the investigation section of law was altered from Section 3(1)(x) of SCs. & STs. (POA) Act into Section 7(1)(d) of Protection of Civil Rights Act mainly on the ground that the version of the petitioner as regards the so-called abuses attributed against A.1 to A.4 touching the name of the caste was not supported by any other witnesses. So, the investigating officer deleting the



provisions of Section 3(1)(x) of SCs. & STs. (POA) Act, filed the charge sheet as above, as such, it was taken cognizance.

(iii) It appears further that initially the *defacto*-complainant was examined at the time of commencement of trial and she was examined as P.W.13. Soon after, her examination before the trial Court as P.W.13, the State, represented by the Deputy Superintendent of Police, Visakhapatnam, got filed an application under Section 216 of the Code of Criminal Procedure ("Cr.P.C." for short). According to the said copy of petition, the petition was signed by the senior Public Prosecutor.

(iv) The substance of the contents of the said application before the Court below is that originally, the Crime No.1 of 2005 was registered under Section 3 (1) (x) of SCs. & STs. (POA) Act and Section 506 of IPC and later, it was altered into Section 7(1)(d) of Protection of Civil Rights Act and Section 353 and 506 of IPC which was resulted into filing of the charge sheet as above. During the course of trial, P.W.13, *defacto*-complainant and other witnesses revealed the offence under Section 3(1)(x) of SCs. & STs. (POA) Act, as such, accused are liable to be charged for the said offence and P.Ws.18 and 19 supported the evidence of P.W.13 in this regard. The accused abused the



victim in the name of caste. So, the prayer of the learned senior Public Prosecutor, who signed the petition, is to alter the charge against A.1 to A.4 from that of Section 7(1)(d) of the Protection of Civil Rights Act to Section 3(1)(x) of SCs. & STs. (POA) Act and Section 506 of IPC and to commit the case to the Special Court constituted under SCs.&STs. (POA) Act for trial.

(v) The learned Special Mobile Magistrate, Kakinada, after hearing both sides, disposed CrI.M.P.No.1002 of 2008 dismissing the same. Aggrieved by the said order, the *defacto*-complainant filed the present Criminal Revision Case.

4) Now the point that arises for consideration is that as to whether the order, dated 31.10.2008 in CrI.M.P.No.1002 of 2008 in C.C.No.11 of 2006, on the file of the Judicial Magistrate of First Class, Special Mobile Court, Kakinada, suffers with any illegality, irregularity and impropriety and whether it is liable to be interfered with?

Point:-

5) The learned counsel appearing for the petitioner would contend that the investigating officer for the reasons best known deleted the relevant provisions of SCs. & STs (POA) Act at the time of remand and even at the time of filings of charge sheet and several representations that were made by the



petitioner to the higher authorities proved to be a futile and the petitioner as P.W.13 disclosed during the course of trial the real facts which had some support from other witnesses, as such, on the instructions of the petitioner, the learned senior Public Prosecutor filed the application in CrI.M.P.No.1002 of 2008 under Section 216 of Cr.P.C. and the learned Magistrate erroneously dismissed the same and the said order is not sustainable under law. The learned Magistrate did not consider the evidence of the *defacto*-complainant and other prosecution witnesses and failed to consider that the charge can be altered at any time before the judgment. The evidence of P.W.13 would clearly disclose the offence under Section 3(1)(x) of SCs. & STs. (POA) Act, as such, basing on the evidence available on record, charges are liable to be altered and thereupon, case is liable to be committed to the learned Special Court constituted under the provisions of SCs. & STs. (POA) Act.

6) The learned senior counsel, Sri K. Chidambaram, would contend on behalf of the respondent Nos.2 to 5 that the impugned order under challenge is absolutely sustainable under law and facts. The learned Magistrate rightly looked into the outcome of the investigation and further rightly pointed out that



the evidence is not sufficient to alter the charges, as such, the Criminal Revision Case is liable to be dismissed.

7) There is no dispute that basing on the contents of the report lodged by the *defacto*-complainant, FIR in Crime No.1 of 2005 was registered under the provisions of Section 3(1)(x) of SCs. & STs. (POA) Act and Section 506 of IPC. Even at the time of remand, the investigating officer found that the allegations made by the *defacto*-complainant as regards the abusing of her in the name of caste in the eye of public have no support from the statements of other witnesses, as such, he deleted Section 3(1)(x) of SCs. & STs. (POA) Act. There is also no dispute that even the Deputy Superintendent of Police, CID, also come to such a conclusion and confined the charge sheet only to the provisions of Section 7(1)(d) of Protection of Civil Rights Act and Sections 353 and 506 r/w 34 of IPC.

8) Before going to appreciate the contentions in proper prospective, it is pertinent to look into certain scheme of provisions in the Criminal Procedure Code to ascertain what is the basis either for framing of original charges or for alteration of charges. Insofar as the provisions regulating the criminal trial before the Courts other than the Sessions Court is concerned, Chapter-XIX of the Criminal Procedure Code deals with trial of



warrant cases by Magistrate. It contains further A & B. So, Chapter-XIX under the caption of trial of Magistrates under caption A relates to cases instituted on police report. Caption B deals with the cases instituted other than the police report. Chapter-XX of the Criminal Procedure Code deals with trial of summons cases by Magistrates.

9) At this juncture, it is pertinent to look into Section 239 of Cr.P.C. and Section 240 of Cr.P.C.

Section 239 Cr.P.C. runs as follows:

239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 240 Cr.P.C. runs as follows:

240. Framing of charge.

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.



10) While Section 239 Cr.P.C. deals with the powers of the Magistrate to discharge the accused basing on the police report and the documents sent to the Court under Section 173 of Cr.P.C. and after making such examination, if any, Section 240 Cr.P.C., on the other hand, deals with framing of charges after consideration of the material as contemplated under Section 239 Cr.P.C. and further the examination, if any, of the accused done under Section 239 Cr.P.C. So, the basis for framing of charges in cases instituted on a police report would be that of police report and the documents enclosed thereto under Section 173 of Cr.P.C. and further by making examination of the accused as regards the allegations in the charge sheet etc.

11) Now, as pointed out caption B deals with cases instituted otherwise on police report. So, those are relating to the cases instituted as private complaints. In this regard, the scheme of provisions under Sections 244, 245 and 246 Cr.P.C., present a situation that after appearance of the accused before the Magistrate in cases instituted otherwise than on police report, the Magistrate is supposed to hear the prosecution and to take all evidence as may be adduced in support of the prosecution case. It further contemplates that the Magistrate



has every power to discharge the accused after consideration of the evidence that was taken under Section 244 of Cr.P.C., if no case is made out against the accused. It further contemplates that if the evidence so taken or even prior to that there is a ground presuming that accused had committed the offence, he shall frame a charge in writing against the accused. It is only after framing of charges, then an opportunity is to be given to the accused to cross examine the witnesses whose evidence is taken under Section 244 of Cr.P.C.

12) Insofar as the trial of cases under summons procedure, Section 251 of Cr.P.C. contemplates questioning the accused as to whether he pleads guilty or has any defence with reference to the allegations made out by the prosecution. Even the basis for such questioning under Section 251 of Cr.P.C. would also be the averments in the charge sheet and the supporting material thereof.

13) Now, coming to the case on hand, it is not clear as to whether summons procedure or warrant procedure as cases instituted on police report was followed by the trial court or not. However, it appears that the accused are under trial for the allegations under Sections 353, 506 r/w 34 of IPC and Section 7(1)(d) of Protection of Civil Rights Act. So, considering the said



allegations, it has to be assumed that charges appear to have been framed against the accused by treating the offence as warrant case. This conclusion of this Court is fortified by the fact that the prosecution filed application before the trial Court for alteration of charges under Section 216 of Cr.P.C. Now, the fact is that neither the provisions relating to framing of charges relating to the warrant cases instituted on police report nor the provision relating to questioning the accused under Section 251 Cr.P.C. authorizes any Magistrate to make alteration of charges by looking into the evidence that is adduced during the course of trial. The scheme of the provisions of the Criminal Procedure Code shows that the basis for framing of charges in a case instituted on police report or even the basis for questioning the accused under Section 251 of Cr.P.C. would be the charge sheet and the supporting material thereto submitted by the investigating officer, but, not the evidence that is adduced during the course of trial.

14) Now, it is appropriate to look into Section 216 Cr.P.C. A close look at Section 216 Cr.P.C. means that any Court may alter or add to any charge at any time before judgment is pronounced and every such alteration or addition shall be read and explained to the accused. It is altogether a



different aspect that if the alteration or addition is not going to prejudice to the defence of the accused, the Court can go ahead with the trial and if the alteration or addition is such that, it is going to cause prejudice to the accused, the court may either direct a new trial or adjudication for trial for such period as may be necessary.

15) The case on hand altogether dealt with a different situation that the learned Magistrate having considered the material submitted by the investigating officer, took cognizance for the offence alleged under Sections 353 and 506 IPC and Section 7(1)(d) of Protection of Civil Rights Act and accordingly, framed charges basing on the said material alone originally. Section 216 Cr.P.C. did not deal with any situation for alteration or addition of charges basing on the evidence that is recorded during the course of trial. When the basis for framing of original charge is the police report and the supporting material, the basis for alteration or addition should also be the material available on record, if any, overlooked by the Court at the time of framing of charges due to inadvertence or otherwise. In my considered view, simply because the witnesses for the prosecution especially, P.W.13, the *defacto*-complainant, stick on to her version in the report lodged by her, it does not enable the Court



to resort for alteration or addition of charge. By no stretch of imagination, it can be held that alteration of charges or addition of charges under Section 216 Cr.P.C. has to be done basing on the evidence available on record.

16) As evident from the order of the learned Magistrate in Crl.M.P.No.1002 of 2008 in C.C.No.11 of 2006, the learned Magistrate instead of discussing about the maintainability of the application i.e., to alter the charge or to add the charge basing on the evidence available on record went on to decide the same basing on merits. In this regard, this Court is of the considered view that the offence under Section 3(1)(x) of SCs. & STs. (POA) Act, 1989, is triable by a Special Court constituted under the provisions of the said Act. The learned Magistrate took cognizance only under Section 7(1)(d) of Protection of Civil Rights Act and Sections 353 and 506 r/w 34 of IPC and he appears to have framed the charges thereof accordingly and commenced the trial and after examination of P.W.13, the Crl.M.P.No.1002 of 2008 was filed before the trial Court. When the learned Magistrate is not competent to try the cases filed under Section 3(1)(x) of SCs. & STs. (POA) Act, 1989, virtually he is not at all competent to look into as to whether the charges



are liable to be altered under Section 216 Cr.P.C. into that of Section 3(1)(x) of SCs. & STs. (POA) Act, 1989.

17) Whenever any Magistrate is enquiring into any offence, for which he is competent to try the offender after framing necessary charges, an application under Section 216 Cr.P.C. cannot be moved before the particular Court basing on the evidence available on record praying the Court to alter the charges that are already framed into that of a serious offence which is to be tried by a Special Court or any other superior Court. Regarding the provisions in the Criminal Procedure Code regulating trial before Court of Sessions, Section 228 of Cr.P.C. confers powers even a Sessions Judge to frame a charge against the accused, though the offence is not exclusively triable by a Court of Sessions and to transfer the case to the Chief Judicial Magistrate or Judicial Magistrate of First Class. As regards the trial before the Magistrates be that may be under warrant procedure or summons procedure, it does not confer any power on the Magistrate to frame a charge for which he is not competent to try the offender and to commit the case to the Special Court or the Court of Sessions. So, the very prayer of the petitioner in CrI.M.P.No.1002 of 2008 before the learned Magistrate is unknown to the procedure.



19) Having regard to the above, this Court is of the considered view that the filing of the petition by the learned senior Public Prosecutor that too at the request of the *defacto*-complainant (as canvassed in the Criminal Revision Case) to alter the charges basing on the evidence available on record is not at all proper and such an application before the trial Court is not at all maintainable. The learned Magistrate instead of deciding the application on maintainability went on to dismiss the same on merits. As the application filed by the petitioner is not in accordance with the procedure and though the learned Magistrate instead of deciding the petition as to the maintainability, decided the same on merits, but, this Court cannot interfere with such an order so as to grant the relief prayed in the Criminal Revision Case.

20) In the result, the Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 28.11.2022.

Note: LR copy be marked.

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THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL.R.C.NO.1650 of 2008

Date:28.11.2022

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