

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY
CRIMINAL PETITION No.353 OF 2021

ORDER :

This Criminal Petition, under Section 482 CrPC, is filed seeking a direction to the learned IV Additional Judicial Magistrate of First Class, Nellore to hear the application in CF No.199 of 2020 in C.C. No.3361 of 2019 and pass order in accordance with law.

2. A charge sheet has been filed against the petitioner and others for the offences punishable under Sections 120B, 468, 469, 471, 506 read with 468 read with 109 of the Indian Penal Code, 1860 and 65 and 71 of the Information Technology Act, 2000, in crime No.521 of 2016 of Nellore Rural police station, Nellore, and the same was taken on file as C.C. No.3361 of 2019 on the file of IV Additional Judicial Magistrate of First Class, Nellore. Pending the proceedings before the learned Magistrate, the learned Public Prosecutor filed a petition in CF No.199 of 2020 under Section 321 of the Code of

Criminal Procedure, 1973 on behalf of the prosecution for withdrawal of the prosecution as against the petitioner herein. The learned Magistrate returned the same on 06.07.2020 with objections viz. as to how the petition was maintainable as the said case has already been taken cognizance and numbered and it is at the stage of sending the record to the Special Court after appearance of the accused and that it is not an urgent matter as per the Notification dated 01.07.2020 issued by the High Court. As against the said endorsement, the present Criminal Petition came to be filed.

3. Heard the learned senior counsel Sri O.Manohar Reddy appearing for the petitioner and the learned Additional Public Prosecutor for respondent-State.

4. Special Court for trial of Criminal Cases relating to Elected MPs/MLAs at Vijayawada was constituted by way of G.O.Ms.No.26, Law (LA, LA & J-Home-Courts-A) Department, dated 26.02.2018.

Subsequently, G.O.Rt.No.250, Law (L, LA & J-Home-Courts-A) Department, dated 03.04.2018 was issued specifying the whole of the State of Andhra Pradesh as the local area to the said Special Court. The procedure contemplated under Section 193 CrPC would apply in those cases. A perusal of the said G.O. would go to show that trial has to be conducted by the Special Court and the same has to be read along with CrPC. All other proceedings have to be conducted by the Committal Court.

5. Learned senior counsel appearing for the petitioner relied on a decision in *Chintamaneni Prabhakara Rao @ Prabhakar v. State of Andhra Pradesh and another*¹, wherein it is held thus: (paragraphs 9 and 10).

“For another reason also the designated Court has to give way to the Special Court under SCs and STs (PoA) Act. The designated Court is constituted only under G.O. Rt.No.250 which is an executive order of the State but not an enactment. Regarding the scope

¹ 2020 (1) ALD (CrI.) 413 (AP)

and ambit of executive powers of a State, Article 162 of Constitution of India reads thus:

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws: Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Thus, though the executive power of a State shall extend to the matters on which the Legislature of a State has power to make Laws, still by virtue of the proviso, such executive power is subject to and limited by the executive power expressly conferred by the Constitution or by any law made by the Parliament. In that view, since the SCs and STs (PoA) Act, 1989 is a Central Legislation, the provisions therein will have overriding power over the executive order.

10. Next, a perusal of G.O. Rt.No.250 would show that only power of trial of criminal cases relating to elected MPs and MLAs is conferred on the designated Courts, but it would not appear pre-trial

procedure such as committal proceedings, etc. is dispensed with. Therefore, the designated Court comes into picture only from the stage of trial but not before and pre-trial procedure should be followed in the concerned Courts as per the provisions of CrPC and other relevant laws.”

From a perusal of the aforesaid judgment, it is clear that the designated Court comes into picture only from the stage of trial but not before, and pre-trial procedure should be followed in the concerned Courts as per the provisions of the CrPC and other relevant laws.

6. The petition filed by the learned Public Prosecutor before the learned Magistrate would certainly come at the stage of pre-trial. When once such an application has been filed by the learned Public Prosecutor, it is obligatory on the part of the learned Magistrate initially to decide the said application and pass an order to that extent. Admittedly, when such an application is filed by the learned Public Prosecutor, it has to be decided in accordance with law. As stated *supra*, the Special Court has been constituted for the

MPs and MLAs exclusively for trial of the cases. When such is the case, it is the bounden duty of the learned Magistrate to dispose of the petition filed by the learned Public Prosecutor. Instead of passing the order, the learned Magistrate erred in returning the same with the impugned endorsement. Therefore, the learned IV Additional Judicial Magistrate of First Class, Nellore is directed to dispose of the application in CF No.199 of 2020 in C.C. No.3361 of 2019 in accordance with law.

7. With the aforesaid observations, the Criminal Petition is disposed of.

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

JUSTICE K. SREENIVASA REDDY

22.09.2022
DRK

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION No.353 OF 2021

Date: 22.09.2022

DRK