

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.3823 OF 2015

ORDER:

This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C') by the petitioners/A1 and A2 requesting to quash the proceedings against them in P.R.C. No.2 of 2014 on the file of the Court of the learned Judicial First Class Magistrate, Rajam.

2. Heard the learned counsel for petitioners/A1 and A2, and also the first respondent herein-State represented by the Public Prosecutor, before admission and before ordering any notice to the second respondent/defacto complainant. Perused the material on record.

3. It is needless to say that the proceedings are yet to be committed for trial before the Sessions Court. As laid down by the Apex Court in **M/s. India Carat Pvt. Ltd. v. State of Karnataka and another** and in **Raj Kishore Prasad v. State of Bihar and another** the committal Magistrate is almost a post office duty after taken cognizance under Section 190 of Cr.P.C of the case being committed as triable by Court of Sessions; though while taking cognizance even in such cases, the Magistrate is not bound by the police final report showing *prima facie* accusation against all or some of accused and or showing no case made out and the case is referred thereby with notice to *de facto* complainant as well explained the scope by the subsequent expenses following **India Carat's** case (Supra 1) and explaining **Rajkishore Prasad's** case (Supra 2) like in **Uma Shankar Singh v. State of Bihar and another** and particularly by the Constitutional Bench in **Dharam Pal and others v. State of Haryana and another** differing with **Moti Lal Songara v. Prem Prakash @ Pappu**, while answering the reference on divergent opinions and **Dharam pal's** case (Supra 4) later followed in **Sunil Bharti Mittal v. Central Bureau of Investigation** and

also by this Court in **Moraboina Venkatesu and others v. State of A.P. rep. by Public Prosecutor, High Court of A.P, and another.** When once the matter is being committed to the Court of Sessions, the Sessions Judge has to take cognizance under Section 193 of the Code, and there is an opportunity to the petitioners/accused under Section 227 of the Code either by filing an application or even by oral submissions or any grounds to urge for discharge, else to frame charge within the purview of Sections 226 to 228 of Cr.P.C from the prosecution material as laid down in **State of Orissa v. Debendra Nath Pathi** by left open the remedy therefor, the petition is disposed of as the material placed falls short even to admit the application under Section 482 of Cr.P.C.

4. It is left open to the petitioners in the event of framing of any charges under Section 228 of the Code for proceeding with trial, after answering the same, if unable to attend both for the day-to-day trial contemplated by Section 309 of the Code, to file an application under Rule 37 of the Criminal Rules of Practice to consider on own merits and with necessary conditions.

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

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**Dr. B. SIVA SANKARA RAO, J**

Date: 03.06.2015

**Note:** L.R. copy to be marked

(B/O)

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