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SLP(Cr1.)No. 4126 OF 2000

ITEM No.32

Court No. 3

SECTION II  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No. 4126/2000

(From the judgement and order dated 16/11/1999 in CRLRC 1006/97  
of The HIGH COURT OF A.P AT HYDERABAD)

STATE OF A.P.

Petitioner (s)

VERSUS

SOUMYA MISRA & ORS.

Respondent (s)

( With Appln(s). for c/delay in filing SLP and stay and  
deletion of the name of respondent )

Date : 05/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK  
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s)

Mr. Guntur Prabhakar,Adv.

For Respondent (s)

M/s. D.Bharat Kumar,A.H.Cashicar,Anand Dey,  
Mr. Abhijit Sengupta,Advs.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....J.  
.SP2

Delay condoned.  
Leave granted.  
The appeal is disposed.

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@  
AA  
Court Master Court Master@@

AAAA

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1122/2001@@  
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE  
(arising out of SLP(Crl) No. 4126/2000)

State of A.P. ...Appellant

Vs.

Soumya Misra & Ors. ...Respondents

O R D E R@@  
EEEEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....T.....J.  
.SP2

There is an application for deletion of the respondents 1 and 3 from the array of respondents. The prayer is allowed. Respondents 1 and 3 be deleted from the array of respondents.

Leave granted.

On the basis of the complaint filed, the Magistrate passed an order taking the complaint on file and directing further enquiry in the matter under section 202, Cr.P.C., instead of issuing the process. This order of the Magistrate is dated 23rd April, 1997. The order being assailed in revision, the Sessions Judge was of the opinion that the Magistrate has taken cognizance of the offence, and necessarily therefore if the Magistrate takes cognizance of an offence, then the question of directing a further enquiry under section 202, Cr.P.C. would not arise. The Sessions Judge having interfered with the order of the Magistrate, and directed issuance of process, the matter was carried to the High Court. The High Court agreed with the Sessions Judge, being of the opinion that the order of Magistrate dated 23rd April, 1997 tantamounts to an order taking cognizance, and as such did not interfere with the order of the learned Sessions Judge. It is this order which is under

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challenge in this appeal.

Mr. Prabhakar appearing for the appellant contends that the order of the Magistrate dated 23rd April, 1997 to the effect that the complaint is taken on file would not tantamount to an order of taking cognizance of the offence, and it is apparent from the subsequent part of the order where the Magistrate instead of directing issuance of process directed a further enquiry under section 202, Cr.P.C. This being the position, Mr. Prabhakar contends that the order of the Sessions Judge as well as that of the High Court cannot be sustained. We find sufficient force in the aforesaid contention. Having perused the order of the Magistrate dated 23rd April, 1997 we have no hesitation in coming to the conclusion that the Magistrate did not take cognizance of the offence on the averment made in the complaint petition, and on the other hand directed a further enquiry in the matter. We therefore set aside the impugned order of the High Court and that of the Sessions Judge and direct the Magistrate to proceed with the enquiry under section 202, Cr.P.C. and thereafter proceed with the criminal proceeding in accordance with law.

The appeal is disposed of accordingly.

.....J.  
( G. B. PATTANAİK )

New Delhi,  
November 5, 2001

.....J.  
( R. P. SETHI )