

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.11484 of 2012

ORDER:

This matter was listed before this Court on 22.09.2015 for hearing of the interlocutory applications and, more particularly, the vacate stay petition filed by the fourth respondent, WVMP No.2213 of 2012. However, there was no representation for the fourth respondent. Having heard the arguments of the learned counsel for the petitioner and the learned Assistant Government Pleader for Home, this Court directed the writ petition itself to be posted for orders on 23.09.2015. Today, there is again no representation for the fourth respondent or his learned counsel when the matter is taken up for hearing. This Court is therefore constrained to dispose of the writ petition without hearing the fourth respondent.

This writ petition was filed for a declaration that the order dated 02.08.2011 in CrI.M.P.No.67 of 2010 in Crime No.621 of 2009 on the file of the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, which culminated in the learned Judge taking cognizance and issuing a summons to the petitioner in PRC No.7 of 2012, was contrary to law and to quash the same.

Crime No.621 of 2009 was registered on the file of Panjagutta Police Station upon the complaint made by the fourth respondent against the petitioner. The fourth respondent was a driver in the service of the petitioner. He belonged to a scheduled caste community. According to him, on 22.03.2009, the petitioner took him to Taj Deccan Hotel for attending a party and after completion of the party, the petitioner slapped and beat him and also abused him by caste. As per the fourth respondent's written complaint, the petitioner allegedly abused him in Telugu. It was on this basis that the said crime was registered. However, during the course of investigation, the police authorities found any number of discrepancies which showed the complaint

lodged by the fourth respondent to be without basis. Further, none of the independent witnesses supported the version of the fourth respondent. Upon obtaining permission from the competent authority, the Investigating Officer filed a final report under Section 173 Cr.P.C. before the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, citing 'lack of evidence'. However, as the fourth respondent filed a protest petition before the Court in CrI.M.P.No.67 of 2010, the Court passed the order dated 02.08.2011 holding that a *prima facie* case was made out against the petitioner and took cognizance of the offence vide PRC No.7 of 2012. Aggrieved thereby, the petitioner filed the present writ petition.

This Court, by order dated 20.04.2012, suspended the operation of the order dated 02.08.2011 passed in CrI.M.P.No.67 of 2010 in Crime No.621 of 2009 by the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, and stayed all further proceedings in PRC No.7 of 2012 on the file of the said learned Judge.

The final report initially filed by the police authorities under Section 173 Cr.P.C. makes for an interesting reading. Therein, the police authorities referred to the actual narration of events as contained in the fourth respondent's typewritten Telugu complaint, wherein he specifically set out the words of abuse in Telugu language. However, when the police took up investigation and examined the fourth respondent, he changed his version and stated that the petitioner abused him in Hindi. He produced two witnesses, namely Mallesh and Madhu. However, sanctity of their evidence was found to be doubtful as the cell phone records did not support their version as to why they were present at that location at that point of time. The Security Officer at Taj Deccan Hotel also did not support the version of the fourth respondent. The fourth respondent, upon being questioned, admitted that the petitioner did not know Telugu and when pointedly asked as to how he could abuse him in Telugu by taking his caste

name, the fourth respondent had no answer.

The police authorities further found that though the incident was said to have taken place on 22.03.2009, the complaint was lodged by the fourth respondent only on 09.06.2009. The reason for this delay is not far to gather. The final report itself discloses that on 29.05.2009, the fourth respondent received a notice from the petitioner asking him to repay the loan amount of over Rs.14,000/- failing which the petitioner threatened to take action against him. The fourth respondent acknowledged receipt of this notice. It was only thereafter that he lodged the complaint against the petitioner on 09.06.2009. The police authorities therefore took note of the delay on the part of the fourth respondent in lodging the complaint and ultimately filed the final report citing 'lack of evidence'.

Surprisingly, all these aspects were completely ignored by the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, while passing the order dated 02.08.2011 in CrI.M.P.No.67 of 2010. The learned Judge merely referred to the facts without noticing the inherent contradictions therein as to the petitioner abusing the fourth respondent in Telugu language, which he did not even know. The learned Judge also ignored the changing versions of the fourth respondent and the inference to be drawn from the long delay on his part in lodging the complaint. There was thus no basis for the learned Judge to conclude that a *prima facie* case was made out to proceed against the petitioner under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The order therefore cannot be sustained being in complete variance with the record.

The writ petition is accordingly allowed setting aside the order dated 02.08.2011 passed by the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.67 of 2010 in Crime No.621 of 2009 and in consequence, quashing PRC No.7 of 2012 on the file of the said learned Judge.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

23rd September, 2015
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