

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.37556 of 2014 and 2986 of 2015

-
-

COMMON ORDER:

Since the subject matter of these writ petitions is one and the same, they are being disposed of by this common order.

The petitioner is the complainant and on the basis of the complaint of the petitioner, a case in Cr.No.439 of 2013 was registered by the 3rd respondent in W.P.No.2986 of 2015, which has since been investigated and charge-sheet was filed and is now subject matter of C.C.No.4238 of 2013 before the II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Kukatpally. The said C.C. is stated to be coming up for recording evidence of the petitioner-complainant.

The grievance of the petitioner in both these writ petitions is that at the time of registration of the crime, the petitioner had given English hand written complaint, but however the same is not found in the charge-sheet, which is filed by the 3rd respondent in W.P.No.2986 of 2015 before the court below. The petitioner states that instead of registering and investigating the crime on the basis of the said original complaint of the petitioner, the police have registered FIR on the basis of the complaint reduced into writing by the constables of the 3rd respondent Police Station and, therefore, the entire investigation made and charge-sheet filed are not in conformity with the complaint of the petitioner.

In W.P.No.2986 of 2015, the petitioner seeks relief of Mandamus against the 3rd respondent particularly for not sending original hand written complaint of the petitioner along with Telugu draft while issuing FIR and returning the Protest Petition filed before the court below and as such seeks a direction to the Court below to accept the said protest petition and reject the

final report filed by the Police in the said crime.

In W.P.No.37556 of 2014 also, the petitioner's grievance is with regard to not forwarding hand written complaint of the petitioner, dated 29-04-2013 along with FIR and charge-sheet to the court below.

Both the said grievances are in the nature of disputed questions, which cannot be adjudicated under Article 226 of the Constitution of India. Whether the petitioner has filed any such original handwritten complaint and whether the same is not accompanied by the charge-sheet and whether the investigation is defective on that ground, are all matters which the petitioner has to bring to the notice of the learned Magistrate, who is seized of the criminal case and charge-sheet. Instead, the petitioner has approached this Court by way of these two writ petitions.

Learned Government Pleader, who has received instructions from the respondents, points out that the documents filed by the petitioner i.e., original written complaint does not contain any endorsement while the complaint, which is the copy of FIR, contains an endorsement by the police officer concerned of the 3rd respondent in W.P.No.2986 of 2015.

Even these aspects are also in the nature of apprehension of evidence, which cannot be gone into under Article 226 of the Constitution of India. Since the criminal case is posted for recording evidence of the petitioner-complainant, it is open to the petitioner to appear before the court below and give her statement including the aspects on which the petitioner has grievance with regard to investigation and charge-sheet. It is for the Magistrate, who is seized of the aforesaid criminal case, to consider all these aspects and take appropriate decision in the matter in accordance with law. Therefore, no relief can be granted to the petitioner in these writ petitions.

Accordingly, the writ petitions are dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall

stand closed.

Date: 18-02-2015
Prv

VILAS V.AFZULPURKAR, J

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.37556 of 2014 and 2986 of 2015

18-02-2015

Prv