

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CRIMINAL REVISION CASE No.226 of 2015

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ORDER:

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The present Criminal Revision Case is filed by accused No.2, under Sections 397 and 401 Cr.P.C., aggrieved by the order dated 10.02.2015 passed in C.F.No.880 of 2015 on the file of the Additional Judicial magistrate of First Class, Jaggaiahpetta, wherein and whereunder, the private complaint filed by the first respondent was forwarded to Station House Officer, Jaggaiahpetta under Section 156 (3) Cr.P.C.

Learned counsel for the petitioner submits that the learned Magistrate referred the complaint filed by the first respondent herein without assigning any reasons and the impugned order does not show application of mind.

The issue as to whether the Magistrate has to give reasons while referring to the case to the police is no more *res integra* in view of the orders passed by this Court in ***D.K.Pattanaik and another v. Station House Officer, Nallebelly Mandal, Warangal District and another***^[1]

wherein the Apex Court held as under:

“On a careful consideration of the scheme of the Code, I am of the view that even for ordering investigation by police under Section 156 (3) Cr.P.C., the Magistrate cannot act merely as a post office and he is bound to apply his mind before so doing.

The endorsement of the Magistrate, by which he directed the police to investigate the complaint, does not show that there was any application of mind whatsoever. There is nothing to suggest therein whether he felt that the

allegations, *prima facie*, made out an offence alleged and a further investigation is required or not. For this purpose, in my considered view, the Magistrate is bound to disclose his mind by a brief indication of the reason for ordering such an investigation. Otherwise, it is not possible to know whether the Magistrate has mechanically forwarded the complaint to the police or he had done so after application of mind.”

In **Anil Kumar and others Vs M.K.Aiyappa and another**, the Apex Court while dealing with a reference made under Section 156 (3) Cr.P.C., observed as under :

10. “We may first examine whether the Magistrate, while exercising his powers under Section 156 (3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report.

11. The scope of Section 156 (3) Cr.P.C., came up for consideration before this Court in several cases. This Court in Maksud Saiyed Case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156 (3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156 (3) or Section 200 Cr.P.C, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) CrPC, should be reflected in the order, though a detailed expression of his views, is neither required nor warranted.”

In view of the judgments referred to above and as the Magistrate failed to give any reasons while referring the matter under Sections 156 (3) Cr.P.C., the order under challenge is set aside and the matter is remanded back to the concerned Magistrate directing him to pass an order showing application of mind to the facts in issue while referring the

case to police for investigation under Section 156 (3) Cr.P.C.

Accordingly, the Criminal Revision Case is allowed.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE C. PRAVEEN KUMAR

04.02.2015

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[\[1\]](#) 2008 (1) ALD (cr.) 692 (A.P)