

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Appeal No.1288 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 36010 of 2015 dated 24.10.2015.

The appellant herein is the petitioner in the writ petition. He invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, to declare the action of respondent Nos. 2 and 3, in not ordering fresh/denovo investigation by entrusting it to an independent agency pursuant to registration of Crime No. 426 of 2014 on the file of the Station House Officer, Uppal Police Station, as arbitrary and illegal.

A final report was filed, in Crime No. 426 of 2014 on 12.3.2015, before the III Metropolitan Magistrate, Cyberabad at L.B. Nagar. The appellant's grievance was that, even though Crime No.426 of 2014 was registered in view of the directions of this Court for offences under Sections 420, 448, 380 and 506 of I.P.C, the respondents, without examining the appellant and without recovery of the properties, had filed a final report.

In the order under appeal, the learned Single Judge held that it was open to the appellant to file a protest petition informing the concerned Court of his grievance that he was not examined, the things alleged to have been stolen by the 6th respondent were not recovered, and none of the independent witnesses were examined by the police; and, on such an application being filed, the III Metropolitan Magistrate, Cyberabad should consider the same in accordance with law.

The submission of Sri P. Venugopal, learned Senior Counsel, is that the shoddy investigation by the respondent police officials necessitated the petitioner's complaint being investigated afresh by an independent agency; in the light of the serious charges levelled against the 6th respondent, this Court ought to have at least entertained the writ petition, instead of disposing it of at the stage of admission; when serious allegations are made, the complaint requires a thorough investigation; and, as the statement of the appellant was not even recorded, re-investigation should be ordered. Learned Senior Counsel would rely on the judgment of this Court in **Anjali Jain vs. Commissioner of Police, Hyderabad**¹.

It is not in dispute that, against the final report filed under Section 173(2) CrPC, the appellant has the remedy of filing a protest petition before the concerned Magistrate. In the order under appeal, the learned Single Judge has directed the concerned Magistrate to consider all the grievances put forth by the petitioner in his protest petition.

Reliance placed by Sri P.Venugopal, learned Senior Counsel, on **Anjali Jain**¹ is misplaced as the said judgment related to misuse of office, and abuse of authority, by police officers who, despite visiting the apartment building and having found the petitioner-tenant's belongings to be strewn on the pavement, had prepared a draft final report, at the behest of the Assistant Commissioner of Police, stating that the complaint lacked evidence. This Court faulted the action of the respondent-police officers in this regard. In the instant case, the allegation of high handedness are made against the 6th respondent, an individual and not a police officer.

¹ 2012 (2) ALD (Criminal) 45

Sri P. Venugopal, learned Senior Counsel, would submit that respondent Nos. 4 and 5, who were police officers, had acted at the behest of the 6th respondent. It is well settled that allegations of *mala fides* can only be examined when the person, against whom such allegations are made, is arrayed in the Writ Petition as a respondent *eo nomine*. (**State of Bihar vs. P.P. Sharma**²).

The discretion exercised by the learned Single Judge, in relegating the appellant herein to the remedy of approaching the Magistrate by filing a protest petition, does not suffer from a patent illegality necessitating interference in an intra-court appeal under Clause 15 of the Letters Patent.

The writ appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.



(**RAMESH RANGANATHAN, ACJ**)

(**A. SHANKAR NARAYANA, J**)

2nd December, 2016

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² AIR 1991 SC 1260

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Writ Appeal No.1288 of 2016

Date: 2.12.2016

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