

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.37567 of 2016

ORDER:

In this writ petition, the petitioner seeks a writ of mandamus to declare the action of the 1st respondent in proceedings with the investigation in F.I.R.No.104 of 2012 contrary to the orders passed by this Court in CrI.R.C.No.1213 of 2012 dated 27.7.2012 as arbitrary and illegal and consequently, direct the 1st respondent to close the proceedings in F.I.R.NO.104 of 2012.

The sister of the petitioner filed a private complaint against the petitioner and others before the Judicial Magistrate of First Class, Jaggaiahpet and in turn, the learned magistrate forwarded the said complaint to the 1st respondent on 13.7.2012 for registration of case and investigation. On such reference, the 1st respondent registered a case in F.I.R.No.104 of 2012 against the petitioner and others for the offences punishable under Sections 420, 423, 467, 471, 474, 120-B, 196, 200, 202, 207, 506 r/w 34 IPC. Aggrieved thereby, the petitioner and others approached this Court by filing CrI.R.C.No.1213 of 2012 challenging the docket order of the magistrate dated 13.7.2012 in referring the complaint to the police. This Court by orders dated 27.07.2012 set aside the said docket order and remanded the matter to the magistrate with a direction to consider the matter afresh and pass speaking orders. It is the grievance of the petitioner that though the order of the magistrate 13.7.2012 is set aside by this Court, the 1st respondent proceeded with the investigation and arrested the petitioner. Further the 1st respondent filed a petition under Section 91 Cr.P.C. before the magistrate to summon the petitioner along with documents. The magistrate keeping in view of the orders passed by this Court in

Crl.R.C.No.1213 of 2012 held that F.I.R.No.104 of 2012 is no more existence. It is alleged that in spite of the orders of this Court and the trial Court, the 1st respondent is proceeding with the investigation. It is further alleged that questioning the order passed by the magistrate in dismissing the petition filed under Section 91 Cr.P.C., the 1st respondent approached the Sessions Court by filing Crl.R.P.No.78 of 2016 and that on the pretext of pendency of F.I.R., the 1st respondent frequently summoning the petitioner to the police station and harassing him.

Heard and perused the material available on record.

Inasmuch as this Court had already allowed Crl.R.C.No.1213 of 2012 setting aside the docket order of the magistrate dated 13.07.2012 in C.F.No.2281 of 2012 which is the basis for registration of F.I.R.No.104 of 2012, the existence of F.I.R. is *non est* under law and the question of 1st respondent proceeding with the investigation does not arise. Hence, the writ petition is liable to be allowed.

Accordingly, the writ petition is allowed and the proceedings in F.I.R.No.104 of 2012 on the file of 1st respondent as well as the proceedings in Crl.R.P.No.78 of 2016 pending on the file of XVI Additional District Judge, Nandigama are hereby quashed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

RAJA ELANGO,J

21.11.2016

Tsr

