

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.10997 of 2012

ORDER:

Heard the learned counsel for petitioners, the learned Government Pleader for Home (TS) for respondents 1 to 4 and the learned counsel for respondent No.5.

2. This writ petition was filed challenging the action of respondents 2 and 3 in not entrusting the investigation of Crime No.150 of 2009 on the file of Railway Police, Warangal to any other independent investigation agency, particularly to the Police, CID, Hyderabad.

3. The case of the first petitioner is that his brother, who was studying first year MCA course in the fourth respondent college, was found dead on 07.06.2009 between Warangal and Chintapally Railway Stations at KM No.380/27/2. The first petitioner suspects that it was the result of harassment meted out to the deceased by other college students. The Railway Police, Warangal registered a case in Crime No.150 of 2009 under Section 174 of the Cr.P.C and a final report was filed on 06.11.2011 after completion of investigation dropping the action. The first petitioner states that the fourth respondent converted the offence under Section 306 IPC and Section 5 of Prohibition of Ragging in Educational Institutions Act, 1997 and conducted the investigation without examining any of the family members of the deceased. It is the case of the petitioners that the fourth respondent filed final report at the instance of the fifth respondent and there are several lapses in the investigation. In those circumstances, the petitioners submitted a representation dated 09.11.2011 to respondents 2 and 3 requesting them to entrust the investigation of the said crime to any other

independent investigation agency for just and proper investigation. When no action was taken, the present writ petition was filed.

4. A counter-affidavit was filed on behalf of the fourth respondent stating that after registering the crime, investigation was taken up and the Investigating Officer examined the complaint and the driver of train and recorded their statements. The Investigating Officer, along with Railway Police, proceeded to the scene of offence, searched the belongings of the deceased and found a cell phone in his shirt pocket. Inquest was conducted on the dead body. The statements of family members, who were present at the scene of offence, were recorded. The statements of family members revealed that the deceased was studying MCA second year course in the fourth respondent college and he committed suicide due to the ragging made by five students. Based on the said statement, the section of law was altered from Section 174 Cr.P.C to Section 306 IPC and Section 5 of the Prohibition of Ragging in Educational Institutions Act, 1997. The Investigating Officer visited the fourth respondent college and recorded the statements of the Head of the Department and other persons. The personal diary of the deceased was also recovered in the presence of mediators. Later, the Investigating Officer visited Karimnagar and recorded the statement of one Dr.Bhagya Reddy, Neuro Psychiatrist, sixth respondent herein, who treated the deceased prior to his death. She stated in writing that the deceased was in mental depression, behaved like introvert and suffering from depression, sleeplessness (Insomnia), feeling of sadness, lack of interest in surroundings and poor eye contact, which might have resulted in suicide. The statement made by L.Ws.7 to 16 revealed that there was no incident of ragging as

alleged by the family members of the deceased. After completion of investigation and after obtaining permission from the Superintendent of Police, Railways, Secunderabad, the case was referred as "action dropped" on 03.11.2009. Accordingly, a final report was filed before the Court of II Metropolitan Magistrate for Railway at Secunderabad and the said Court accepted the final report and issued proceedings on 05.12.2009. It is also stated in the counter that the State Human Rights Commission, Hyderabad also closed the matter, by its order in HRC.No.5960 of 2009 dated 21.02.2012. Ultimately, the fourth respondent stated that the investigation was conducted impartially by examining 17 witnesses and none of the witness, except the family members of the deceased, stated with regard to suspicion of ragging and abetment to suicide. Based on the said statements only, the final report was submitted. A copy of the FIR, opinion of the Additional Public Prosecutor and notice to the complainant were enclosed with the counter-affidavit.

5. Though the learned counsel for the petitioner vehemently contended that the case should be entrusted to the criminal investigation department, he ultimately submitted a decision of this Court in **Ch.Srihari Rao v. Government of Andhra Pradesh**^[1], wherein this Court. after examining the provisions of law, held as follows.

"12. In view of the facts and circumstances of the case, I deem it proper to dispose of the writ petition observing that as and when the Magistrate of First Class sends a notice to the petitioner, he may appear before the concerned Magistrate and plead his case as to the commission of the cognizable offence by two persons against whom the petitioner made a compliant. Even otherwise, the petitioner is at liberty to appear before the concerned Magistrate and on such appearance, this Court hopes that the Magistrate affords an opportunity to

the petitioner to present his case for taking cognizance of the offence by the concerned Magistrate. Before parting with this case, this Court deems it proper to bring to the notice of the Magistrates concerned the observations made by the Division Bench of the Supreme Court in **Bhagwant Sing v. Commissioner of Police** {(1985) 2 SCC 537}. Their Lordships while laying down the law that the Magistrate must give notice to the informant and provide an opportunity to be heard at the time of the consideration of the police report, also directed that the copies of the said judgment be circulated to one and all. This Court presumes that the said judgment of the Supreme Court has been circulated to all the Magistrates. In spite of this law laid down by the Supreme Court is not being obeyed. Therefore, appropriate steps may be taken by all the Magistrates to follow the law laid down by the apex Court of the land.”

6. In view of the said decision, this writ petition is disposed of giving liberty to the petitioners to take appropriate proceedings in accordance with law. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 04.04.2016
TJMR

[\[1\]](#) 2000 (1) ALD (CrI) 112