

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.39886 of 2016

ORDER:

This writ petition under Article 226 of Constitution of India is filed seeking to declare the impugned notice, dated 27.10.2016, of the 2nd respondent as illegal and arbitrary and consequently to direct respondents 1 & 2 to assign the Crime No.44 of 2015 to any other officer other than the officer, who already closed the said case on the ground of 'lack of evidence' in pursuance to the dismissal of CrI.P.No.9528 of 2015 filed by the accused.

The case of the petitioner is that the petitioner lodged a complaint against respondents 3 to 11, which was registered as FIR No.44 of 2015, alleging that the petitioner belongs to Madiga Caste i.e., Schedule Caste and that Mr.K. Nikleshwar and others and Mrs. Anantha Laxmi and others are the absolute and joint owners of the property bearing Municipal Nos.19-1-689 to 702, situated at Old Maharajgunj Beroon Doodhbowli, Hyderabad, consisting of 453 square yard and that the petitioner purchased 50% share of the property from Mr.K. Nikleshwar and others and 6/7th share in the remaining 50% share of the property from Mrs. Anantha Laxmi and others by way of two registered Irrevocable Agreement of Sale cum GPA bearing Document No.1420 of 2014, dated 16.06.2014, and Document No.1619 of 2014, dated 17.07.2014. The above two documents were registered at the office of the Joint Sub-Registrar, Doodhbowli, Hyderabad and that respondents 3 to 11, who are son-in-laws, wife, sons and daughters of Late A. Satyanarayan Reddy, in collusion with each other, have transferred the above said two properties into their names without any right, title or interest over the said properties by creating sham and bogus sale deeds, in order to cheat and to grab the property of the petitioner with a *mala fide* intention to gain

wrongfully by causing wrongful loss to the petitioner. The petitioner preferred the present writ petition aggrieved by the impugned notice served on the petitioner by the 2nd respondent on 27.10.2016 whereby it is stated in the impugned notice that the complaint lodged by the petitioner, which was registered on 26.05.2015 as Crime No.44 of 2015, for the offence under Section 3(1)(iv) of SCs & STs (POA) Act, 1989 and Section 415 IPC and Section 156(3) Cr.P.C. was forwarded to the Chief Metropolitan Magistrate, Hyderabad, and that the case was referred as 'Lack of Evidence' and that if the petitioner want to oppose the said report, he has to approach the learned Magistrate within a week from the date of receipt of the said impugned notice.

Learned counsel for the petitioner mainly contended that respondents 3 to 11 approached this Court by way of filing CrI.P.No.9528 of 2015 and the said quash petition was dismissed by this Court vide order, dated 19.11.2015, wherein this Court observed as follows:

"The material available on record is *prima facie* sufficient to investigate into the matter in order to ascertain the truthfulness or otherwise of the allegations made in the complaint".

Learned counsel for the petitioner further submitted that in the order, dated 19.11.2015, in the above said CrI.P.No.9528 of 2015, this Court observed that there is a *prima facie* case to investigate into the matter, but whereas the 2nd respondent issued the impugned notice, dated 27.10.2016, to the petitioner by referring the Crime No.44 of 2015 as 'Lack of Evidence'.

Considering the grievance of the petitioner and the submissions of the learned counsel for the petitioner, this Court is of the view that while dealing with the quash petition in CrI.P.No.9528 of 2015, by invoking the provision under Section 482 Cr.P.C., the observation made by this Court will not stand in the way of investigation. Further, the said observations

are not binding either on the Investigation Agency or on the concerned Court where the first information report is pending, while proceeding with the investigation or proceeding with trial. The said order, dated 19.11.2015, in CrI.P.No.9528 of 2015, which the learned counsel for the petitioner is relying on, also indicates the fact that there is a *prima facie* case to investigate into the matter and it also suggests that the truthfulness or otherwise of the allegations can be investigated. Hence, this Court is of the view that the order, dated 19.11.2015, in CrI.P.No.9528 of 2015, on which the learned counsel for the petitioner relies, may not be a ground to entertain this writ petition, but at the same time, when the impugned notice, dated 27.10.2016, was issued to the petitioner informing that the Crime No.44 of 2015 was referred as 'Lack of Evidence' and closed, the petitioner is at liberty to approach the concerned Court where the said final report was filed by the 2nd respondent and file a Protest Petition challenging the nature of investigation, the collection of evidence and the manner in which the case was closed by the 2nd respondent. On such Protest Petition, the concerned Court is directed to proceed, in accordance with law. If there is any grievance to the petitioner thereafter, the petitioner is at liberty to approach this Court.

With the above direction, the Writ Petition is disposed of. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

RAJA ELANGO,J

Date: 18th November, 2016

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