

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.3175 of 2016

ORDER:

This Criminal Petition is filed by the petitioner/complainant under Section 482 Cr.P.C. seeking a direction to the learned Judicial Magistrate of First Class, Tuni, East Godavari District, to dispose of protest petition in CrI.M.P.No.2957 of 2015 in CCSR.No.5093 of 2007, within a prescribed period and to direct him not to proceed further in C.C.Nos.113 and 1088 of 2006 on his file till disposal of the protest petition.

The case of the petitioner is that he filed a private complaint for the offences punishable under Sections 342, 506, 323, 384 read with Section 120 B IPC, which was referred under Section 156 (3) Cr.P.C. to the Kotananduru Police Station, East Godavari District, who registered the same as Crime No.8 of 2005 and after completion of investigation, the police filed charge sheet, which was numbered as C.C.No.113 of 2006. Since the police deleted the names of A-1, A-4 and A-5 from the array of the accused in the said case, the petitioner/complainant filed CrI.M.P.No.1632 of 2006 under Section 210 (2) Cr.P.C. showing them as A-1, A-4 and A-5 along with others and the same was taken on file for the offences punishable under Sections 342, 506, 323 read with Section 120 B IPC and numbered as C.C.No.1088 of 2006. It is further stated that the petitioner also filed another private complaint for the offences punishable under Section 177, 166, 193, 217, 218, 120 B, 420, 466, 468 IPC, and the same was referred to Tuni Town Police Station, which was registered as Crime No.39 of 2008 and after completion of investigation, the police filed the final report stating the case as "false", and as

against which the petitioner- complainant filed the present protest petition. Meanwhile, he also filed CrI.M.P.No.2978 of 2010 in C.C.No.1088 of 2006 seeking to conduct joint trial of the cases in C.C.No.113 of 2006, C.C.No.1088 of 2006 and in Crime No.39 of 2008, on the ground that all the accused in those cases committed the offences in the course of same transaction and the learned Magistrate passed an order stalling simultaneous trial of two cases in C.C.No.113 of 2006 and C.C.No.1088 of 2006 till disposal of the protest petition.

It is evident that in C.C.SR.No.1090 of 2012 arising out of Crime No.39 of 2008, the learned Magistrate directed the petitioner/ complainant to lead evidence on his behalf and produce relevant documents, if any. On 30-07-2015, when the matter was called on, a petition under Section 256 Cr.P.C. was filed by the petitioner-complainant seeking condonation of his absence before the Court on that day, but the learned Magistrate dismissed the same holding that though there was conditional order, the complainant failed to appear before the Court in spite of the protest petition filed in 2011 was pending and consequently, the protest petition was dismissed for default. Thereafter, the petitioner filed second protest petition against the report, but the learned Magistrate dismissed the same on the ground that no second protest petition is maintainable when the earlier protest petition was dismissed. Aggrieved by the same, the present criminal petition is filed.

Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the material on record.

A perusal of the material on record would reveal that the

learned Magistrate has rightly dismissed the second protest petition, as it is not maintainable in law, when the first protest petition was dismissed due to absence of the complainant.

Having heard the learned counsel for the petitioner and in view of the facts and circumstances of the case, this court is of the view that ends of justice would be met if the petitioner-complainant can be given one more opportunity in the facts and circumstances of the case.

Therefore, the learned Additional Judicial First Class Magistrate, Tuni is directed to restore the first protest petition filed by the petitioner-complainant against the final report filed by the police in Crime No.39 of 2008 and to proceed with the case in accordance with law. The petitioner-complainant is directed to appear before the Court on or before 22-04-2016 and examine himself as a witness and also produce all his witnesses, if any, on his behalf, which shall be completed on or before 10-06-2016 positively. However, it is made clear that if there is any failure on the part of the petitioner-complainant either to appear and examine himself as a witness or to produce any other witnesses on his behalf. Having regard to the facts and circumstances of the case, the learned Magistrate is always at liberty to proceed further in accordance with law. The learned Magistrate is also directed not to proceed further in the other two cases in C.C.No.113 of 2006 and C.C.No.1088 of 2006 till disposal of the protest petition. The learned Magistrate is further directed to proceed with in all the three cases, if cognizance is taken on the protest petition, from the month of June 2016.

Subject to the above directions, the Criminal petition is

disposed of. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

RAJA ELANGO, J

Date: 10-03-2016

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