

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.10469 of 2016

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in returned endorsement vide docket order dated 08.03.2016 in an unnumbered CrI.M.P. (vide SR.No.1015/2016 dated 29.02.2016) in Crime No.482 of 2015 on the file of the III Additional Judicial First Class Magistrate at Rajahmundry, East Godavari District under Sections 451 read with Section 457 Cr.P.C.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor, representing the State.

3. This petition has been filed for the custody of the articles which are said to have been directed to be produced before the police. When Criminal Petition No.13001 of 2015 was taken up for hearing by this Court on 04.01.2016, this Court directed that the petitioners therein, i.e., the respondents 2 and 3 herein that they shall not be arrested and that they are directed to appear before the Station House Officer concerned and produce the articles which are in their possession. Thereafter, Criminal Petition No.13001 of 2015 came to be disposed of by this Court vide order dated 18.01.2016. When the said criminal petition was final disposed of, there is no order, whatsoever, insofar as the articles are concerned.

The petitioner herein, who is the *de facto* complainant, filed a petition before the learned Magistrate under Section 451 read with Section 457 Cr.P.C. to direct the police to produce the articles. Since that was not complied with, the present petition is filed.

The report has been called for from the learned Magistrate as to whether any property has been deposited. The learned Magistrate, in his report dated 25.07.2016 informed that in compliance of the orders of this Court, respondents 2 and 3 herein have surrendered before the learned Magistrate and were released on bail, but insofar as the property is

concerned, the learned Magistrate informed that the Station House Officer informed the Court that no case property was recovered in this case and investigation has been completed and charge sheet is yet to be filed.

What is to be noted is that even though there was a direction from the Court to the respondents 2 and 3 herein to produce the articles, the said was not complied with. When that is the case, there is no property, either recovered or deposited before the police or any property is produced before the Court. In such a situation, no order can be passed to return the property which is not at all before the concerned Court.

Viewed thus, this petition is liable to be dismissed. Accordingly, this Criminal Petition is disposed of. Needless to state that as and when any property has been seized or produced or deposited by the police before the learned Magistrate, the learned Magistrate can dispose of the application for return of property as and when it is filed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

28th July, 2016
Bvv

M.S.K.JAISWAL, J