

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.2714 of 2016

ORDER:

This Criminal Petition is filed under Section 482 of Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in CrI.P.No.391 of 2014 on the file of the Special Judge for Trial of Offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad, arising out of offences under Sections 448, 324, 354, 382 and 506 IPC read with Section 34 IPC.

Heard and perused the material.

The brief facts of the case are as follows. The petitioner herein is the complainant. He filed the complaint before the Court below, wherein his sworn statement was recorded and subsequently, a report was called for from the Inspector of Police, which is having jurisdiction where the occurrence took place. The said Inspector also filed a report before the Court below stating that for the occurrence stated in the complaint, already another complaint is registered against the petitioner herein and they are proceeding with the investigation into the matter. He further stated in the report that if the complaint is given by the petitioner, he is ready to complete the investigating basing on the said complaint. Accordingly, the petitioner lodged a complaint before the police concerned, and that the police, after due investigation, referred the matter as lack of evidence. The learned trial Judge dismissed the complaint filed by the petitioner herein after receipt of the report from the police concerned, even though the other complaint is pending before him, in which the learned trial Judge neither passed an order for investigation under Section 156(3) CrPC., nor taken cognizance by invoking Section 200 CrPC. The petitioner again filed protest petition after the investigation is over and report is filed by the police concerned and that the same is dismissed. Aggrieved over the same, the present criminal petition is filed.

The learned Magistrate, on filing of the complaint before the Court below, should refer the matter under Section 156(3) CrPC., and if he is not

intending to send the same for enquiry under Section 156(3) CrPC., he should examine the complainant and other witnesses, if produced, and to proceed with the case after taking cognizance. But, the learned Magistrate, without adopting the procedure as stated above, ordered for enquiry by the investigating agency and that the investigating agency registered the case and filed the final report. The learned Magistrate, under the impression that the subsequent report, which is to be filed by the investigating agency, to be taken into account, dismissed the complaint filed by the petitioner herein, wherein the learned Magistrate neither referred the same under Section 156(3) IPC nor has taken cognizance. Further, the learned Magistrate dismissed the protest petition filed by the petitioner, observing that, "the protest petition is infructuous in nature".

This Court is of the view that the procedure adopted by the learned Magistrate is erroneous in law. Hence, the criminal petition is disposed of with the following directions.

The learned Magistrate is directed to take on file the protest petition filed subsequent to the filing of the report by the investigating agency and to record the sworn statement of the petitioner and the statements of witnesses, if any, produced by the petitioner and to decide whether to take cognisance of the same or not, in accordance with law.

The Criminal Petition is accordingly disposed of. Miscellaneous Petitions pending in this Criminal Petition, if any, shall stand closed.

JUSTICE RAJA ELANGO

08.03.2016

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