

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13879 of 2016

ORDER:

The petitioner is A1 among the two accused of Crime No.141 of 2016 of Bhainsa (T) Police Station, Adilabad District and the 2nd respondent is the *de facto* complainant.

2. A private complaint is filed with supporting affidavit of the complainant in compliance with one of the guidelines of the Apex Court dated 19.03.2015 in **Priyanka Srivastava and others v. State of U.P. and others**¹ and subsequent to that expression. The learned Magistrate passed the order invoking Section 156(3) CrI.P.C directing the police to investigate on said complaint, which resulted in registering the crime. The impugned order dated 12.08.2016, of the learned Magistrate reads as follows:

“Heard and perused the complaint from the averments made in the complaint prima facie accusation made out, it is required further investigation. Hence, this complaint refer to SHO, Bhainsa Town under Section 156(3) Cr.P.C. for investigation and report.”

3. Said crime registered pending investigation, is impugned in the present quash petition.

4. It is submission of the learned counsel for the quash petitioner/A1 that the learned Magistrate did not apply his mind while referring to the police under Section 156(3) CrI.P.C for investigation even nothing filed in proof of any police report given prior to filing of the complaint as per one of the guidelines of **Priyanka Srivastav** supra. The other contention is that the complaint even does not contain any averments on the description of the product said to have been manufactured by the entity. It is

¹ 2015 (4) SCALE 120

appended to the quash petition, so called product description which contain chemical compositions of HITWEED (Pyrethiobac Sodium 10% EC) herbicide for control of weeds in cotton and same is contended as cannot be construed to weed out grass and as such there is no element of cheating *prima facie* and the learned Magistrate committed an error in referring the complaint for investigation by the police in their registering the crime and the proceedings are hereby liable to be quashed.

5. Heard learned counsel for the petitioner and also learned Additional Public Prosecutor representing the State before notice to the 2nd respondent. Perused the material on record.

6. What the learned Magistrate passed the order referred supra is a reasoned one and what is required from the provision is a *prima facie* satisfaction for referring the case, as one for investigation and not *prima facie* satisfaction of the existence of a case for cognizance, for there is a difference between Section 190 Cr.P.C taking of cognizance of offence and Section 156(3) Cr.P.C referring of complaint of a cognizable case for investigation. When the impugned order of the learned Magistrate speaks, without going into the niceties on the phraseology from the substratum of the order is reflecting the application of mind in referring the complaint for investigation as contemplated by law, leave about even no reasons assigned in referring is also by itself not a ground to quash; there is nothing to quash the order of the Magistrate or the consequential registration of FIR, that too at the nasal stage, but for left open any such contention to raise including as to Pesticides Act bars any registration of FIR and taking of cognizance from police report for IPC offences, subsequent to completion of police investigation from any final report and taking of cognizance of any such offence.

7. Having regard to the above and for no grounds to admit or keep the criminal petition pending, same is disposed of giving liberty to the petitioner/accused to move any such application in future after investigation and filing of final report and on taking cognizance for any offence.

As a sequel, miscellaneous petitions, if any, pending in the petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 30.09.2016
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