

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**Criminal Petition No.6567 of 2017**

**ORDER:**

Heard the learned counsel for the petitioner/accused in Cr.No.111 of 2017 of Narasapuram Town Police Station, West Godavari District, and also the learned counsel for the 3<sup>rd</sup> respondent/defacto-complainant on whose private complaint that was referred to police u/sec.156(3) of Cr.P.C by the learned Magistrate. The above crime is registered by the 2<sup>nd</sup> respondent-SHO, Narasapur town Police Station for the offence u/sec.465 and 468 IPC and perused the grounds urged in the quash petition and the other material including private complaint.

Though referral order is not filed by other side, leave about the other contentions particularly of the so called suppression by the defacto-complainant of earlier order of the learned Addl.Judl.Magistrate of First class, Narasapur dt.01.12.2015 in S.R.No.8577 of 2014 which otherwise even left open if the crime otherwise sustainable to place before the investigating officer includes his part of investigation material to consider its consequences, for the stage of referring to police by the learned Magistrate is over and before that the accused shall not have any right of participation otherwise. Coming to the core of the contention there is no affidavit filed in support of the private complaint for the learned Magistrate to refer u/sec.156(3) CrPC though the filing of the private complaint and the referral orders are after 31.03.2017 which is long subsequent to the mandatory directions to be complied with as per the expression of the Apex Court in **Mrs. Priyanka Srivastava and another Vs.State of**

**Uttar Pradesh in** CrI.A.No.781 of 2012,dt.19.03.2015 held by scanning the law at para-19 that-this Court in **Maksud Saiyed Vs.State of Gujarat**<sup>1</sup> examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) or Section 200 CrPC and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. Suffice to say the referral order of the learned Magistrate and registration of the crime are unsustainable.

Accordingly and in the result, the Criminal Petition is disposed of by setting aside the referral order of the learned Magistrate and the private complaint of the complainant is restored to the file of the learned Magistrate if at all there is already an affidavit filed to refer and if not filed if at all only on such filing if necessary to refer, else to proceed under Section 200 to 204 CrPC to take cognizance or to dismiss, as the case may be, after recording sworn statement/s of complainant and his witnesses if any and the learned Magistrate in SR No.8577 of 2014, for its perusal and to give finding on the consequences therefrom of the sustainability of the complaint or otherwise. All the defences are left open to the parties. Pending miscellaneous petitions, if any, shall stand closed.

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 25.10.2017  
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<sup>1</sup> (2008) 5 SCC 668