

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.284 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.32953 of 2016 dated 13.02.2017. The appellants herein are the petitioners in the Writ Petition. They questioned the failure of the Station House Officer, K-Kotapadu, Visakhapatnam District in not registering their complaint dated 02.09.2016 as violative of their fundamental rights under Articles 14 and 21 of the Constitution of India. They sought a consequential direction to the Station House Officer to register a crime against respondents 3 and 5, pursuant to their complaint dated 02.09.2016.

In the order under appeal the Learned Single Judge noted the submissions of the learned Government Pleader for Home that, pursuant to the appellant-writ petitioners' complaint dated 02.09.2016, the Station House Officer had issued a receipt on the same day, but during the enquiry it was revealed that there was a civil dispute between the appellant-writ petitioners and respondents 3 and 5; the Sub-Divisional Magistrate, Visakhapatnam had initiated proceedings under Section 145(1) Cr.P.C. on 22.10.2010; and, since the complaint of the appellant-writ petitioners was civil in nature, they were advised to approach the concerned Civil Court for redressal.

The Learned Single Judge, thereafter, noted the submission of the learned counsel for the appellant-writ petitioners that, even though the Sub-Divisional Magistrate, Visakhapatnam had passed an order dated 22.10.2010 asking the respondents to appear before him and file written statement, no protection was given to the respondents in respect of the subject matter.

The Learned Single Judge observed that it was open to the appellant-writ petitioners to take appropriate proceedings, pending before the Sub-Divisional Magistrate, Visakhapatnam seeking implementation of the orders passed earlier, or for the disposal of the matter before him, or for obtaining appropriate orders from the Civil Court; and it was open to the appellant-writ petitioners to approach the concerned Magistrate by lodging a private complaint, if the police were not taking any action in relation to the said land. The Writ Petition was, accordingly, closed.

Sri V.V.N.Narayana Rao, learned counsel for the appellant-writ petitioners, placing reliance on the judgment of the Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh***¹, would submit that, when a complaint discloses a cognizable offence, the Station House Officer is obligated to register a complaint and cause investigation thereafter.

While we are not impressed with the submission of Sri A.Satya Prasad, learned Senior Counsel appearing on behalf of the unofficial respondents, that the police officials had caused an enquiry, and had come to the conclusion that the dispute was civil in nature, as the Investigation Officer could only have arrived at such a conclusion on completion of investigation, after the complaint was registered, the Learned Single Judge has, instead, relegated the appellant-writ petitioners to avail their remedy, under Section 156(3) of Cr.P.C, of approaching the Magistrate concerned.

The questions, whether the appellant-writ petitioners' complaint could have been registered, and whether the respondents could have treated it as civil in nature, are all matters which would have been required to be examined by the Learned Single Judge only if the writ petition was admitted, that too only after the respondents were given an opportunity of being heard. The Learned Single Judge has, instead,

¹ (2014) 2 Supreme Court Cases 1

relegated the appellant-writ petitioners to the remedy of approaching the Magistrate under Section 156(3) of Cr.P.C. In case the Magistrate is satisfied that the complaint disclosed a cognizable offence, it is always open to him to direct the police officials concerned to register the complaint.

The jurisdiction exercised by this Court in an intra-court appeal, under Clause 15 of the Letters Patent, is extremely limited and, save patent illegality in the order under appeal, no interference is called for. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed.

Needless to state that, in case the appellant-writ petitioners approach the Magistrate concerned under Section 156(3) Cr.P.C, their complaint shall be examined on its own merits uninfluenced by any observations made either in the order under appeal, or in the order now passed by us. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

14th March, 2017
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Date: 14.03.2017

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