

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24055 OF 2012

ORDER:

This writ petition is filed assailing the inaction of the respondents in considering the complaint dated 21.05.2012 and entrusting the investigating to the independent agency C.B.C.I.D in respect of Cr.No.19/2012 of the 1st respondent as illegal and arbitrary and consequently to direct the respondents 4 and 5 to conduct enquiry into the incident dated 12.01.2012 and cause of deaths and award Rs.10 lakhs each to the deceased towards compensation.

2. It is the case of the petitioners that their father was working as a lorry driver under the partnership of Sri Kanaka Durga Lorry Services, situated at Block No.17, Flat No.5, Autonagar, Hyderabad for the past two years. The said lorry service engaged their vehicles with HP gas situated at Cherlapally. That on 12.01.2012, just before Sankranthi festival, the petitioners along with their children came to their parents' house to celebrate festival. When the gas was over in the cylinder and informed the same to their father on phone, who in turn, got the gas cylinder from his proprietor. At about 9.00 a.m, the father of the petitioner fixed the regulator to the cylinder and about to lit the stove, but all of a sudden got big blow and burst of cylinder, which resulted damage of kitchen wall, breaking of cylinder into pieces and severe injuries to the deceased 1 to 4 as well as to the petitioners. They were shifted to one private hospital initially and

subsequently to Gandhi Hospital. During the course of treatment, the father of the petitioner died on 23.01.2012, mother of the petitioners died on 06.02.2012 and one small girl aged about 3 years and boy by name Tejavardhan aged about 2 years died on 13.01.2012 and 28.01.2012 respectively. The police conducted inquest and panchanama under Section 174 of Cr.P.C. Subsequently, the petitioners gave complaint on 21.05.2012 for altering the section of law by adding the culprits. But no action is being taken. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 1st respondent denying the averments in the affidavit filed in support of the writ petition stating that basing on the statement of 2nd deceased on 13.01.2012, they have registered a case in Cr.No.19/2012 under Section 174 Cr.P.C on the file of Kushaiguda Police Station and took up the investigation. That during the course of investigation, this respondent recorded the statement of complainant, went to the scene of accident and secured the presence of mediators and conducted scene of offence and rough sketch was drawn and examined another witness, who is the neighbour of the victims and recorded his detailed statement and that after giving first aid to the victims at Xenia Hospital, they were shifted to Gandhi Hospital for further treatment. That during the course of the treatment at Gandhi Hospital, all the deceased succumbed to injuries. That no foul play was found in the death of the deceased. That the opinion of the doctors who conducted autopsy over the dead bodies found the cause of death

was due to burns. That impartial investigation is going on to find out any further clues and that at this juncture, entrusting of the investigation to the CBCID is not proper and just. It is stated that basing on the outcome of the investigation; an appropriate report would be filed before the concerned Court. No where in the statements of the petitioners that the HP Gas authorities are held responsible for the cause of the deaths of the deceased.

4. Additional counter affidavit is also filed by the 1st respondent reiterating the averments in the counter affidavit stating that generally in this type of cases, there is no specific Section of Law is provided in the Indian Penal Code or in the Code of Criminal Procedure. It is stated that full-fledged investigation was conducted, completed and after completion of the investigation appropriate final report was also filed before the Hon'ble II Class Executive Magistrate-Cum-Tahsildar at Ghatkesar referring the case as "Accidental Burns". It is stated that the then investigation officer conducted impartial investigation and there are no grounds to entrust the investigation to CBCID and that the final report is pending consideration before the Tahsildar and sought for dismissal of the writ petition.

5. Heard learned counsel for the petitioners and learned Government Pleader for Home.

6. Learned counsel for the petitioner submits that during the pendency of writ petition, final report was filed under Section 173 Cr.P.C by mentioning the provision of law as Section 174 Cr.P.C,

and that too the final report was filed before the Executive Magistrate-cum-Tahsildar, which is illegal. She further submits that as a result of negligence on the part of respondents 6 to 8, accident occurred, which resulted in death of the deceased 1 to 4. She submits that the respondents, instead of registering the FIR under appropriate Section of Law, erroneously filed final report under Section 174 Cr.P.C before the Executive Magistrate-Tahsildar, which is illegal and arbitrary. She submits that separate First Information Report could have been registered by the 1st respondent recording the contents of complaint dated 21.05.2012 and could have taken action accordingly. In support of her contention, she relied on the judgment reported in **Upkar Singh v. Ved Prakash**¹.

7. On the other hand, learned Government Pleader for Home submits that though the First Information Report was sent to X Metropolitan Magistrate, Cyberabad at Malkajgiri, who is jurisdictional Magistrate, but the final report under Section 173 of Cr.P.C was filed before the Executive Magistrate-cum-Tahsildar, Ghatkesar Mandal. He submits that when final report is filed before the concerned jurisdictional Magistrate, petitioners can file protest petition and basing on the same, it is open for the concerned Magistrate to order for further investigation, if it is necessary.

8. It is to be seen that the accident occurred on 12.01.2012 which was registered as First Information Report in Cr.No.19 of 2012 under Sections 154 and 157 Cr.P.C on 13.01.2012.

¹ (2004) 13 Supreme Court Cases 292

Subsequently, during the course of treatment, deceased 1 to 4 died. Since there was no stay in the writ petition, investigation was conducted and final report was filed before the Executive Magistrate-cum-Tahsildar, which is unknown to law. The filing of the Final Report before the Tahsildar is not in accordance with the provisions of Cr.P.C.

9. Learned counsel for the petitioners relied on the judgment reported in **Upkar Singh v. Ved Prakash (supra)**, which is a case arose out of an order of Magistrate taking cognizance on the complaint filed by the aggrieved person. But in the present case, petitioners have not filed any complaint before the Magistrate. Code of Criminal Procedure does not provide for filing Charge Sheet before the Executive Magistrate. The said aspect was not disputed by the learned Government Pleader for Home during the course of arguments. The First Information Report was sent to X Metropolitan Magistrate, Cyberabad and it is not known why final report was filed before the Executive Magistrate.

In view of above facts and circumstances, the 1st respondent is directed to take back the Final Report from the Executive Magistrate-cum-Tahsildar, Ghatkesar Mandal in Cr.No.19 of 2012 and file the same before the concerned jurisdictional Magistrate. The aforesaid exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of such charge sheet, the jurisdictional magistrate shall take action in accordance with law. Thereafter, it is open for the petitioners to file protest

petition, if they are aggrieved against that final report and the same shall be dealt with in accordance with law.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

10-07-2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



Date:10.07.2017

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