

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16733 of 2016

&

CRIMINAL PETITION No.2144 OF 2017

COMMON ORDER:

Both these Criminal Petitions, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), have been filed requesting to quash, in other words to set aside, two separate orders, dated 14.09.2016, in CrI.M.P.Nos.5 of 2013 and 6 of 2013 in C.C.No.207 of 2010 passed by the Judicial Magistrate of First Class, Special Mobile Court, Nellore, whereby and whereunder, the applications filed by accused Nos.1 & 2/petitioners herein under Section 239 of the Code, seeking to discharge them of the offences punishable under Sections 120 (B), 406, 420 and 506 read with Section 34 IPC in Crime No.219 of 2007 of II Town Police Station, Nellore, were dismissed.

Heard Sri K.Ananda Rao, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

Learned counsel for the petitioners would submit that earlier, when the petitioners herein together approached this Court by filing Criminal Petition No.5336 of 2010, seeking quashment of the proceedings in the very same Calender Case, this Court, by order dated 13.09.2012, while refusing to accede to the request therein, gave liberty to the petitioners to file an application under Section 239 of the Code

before the trial Court for their discharge, if charges were not already framed and, on such application being filed, the trial Court was directed to dispose of the same in accordance with law. That was the source for the petitioners herein to move CrI.M.P.Nos.5 of 2013 and 6 of 2013, respectively, and they became unsuccessful.

The main contention of the learned counsel for petitioners is that, though, the learned Magistrate, while referring the private complaint filed by the 2nd respondent/*de facto* complainant under Section 156 (3) of the Code, directed the Inspector of Police to conduct investigation and submit a report, the said direction was not complied with and, on the other hand, the Inspector of Police delegated the power to the Sub-Inspector of Police, incidentally, the Station House Officer of that particular police station. Learned counsel would further submit that without authority, the Sub-Inspector of Police conducted investigation and filed charge sheet. It is, therefore, his submission that the very delegation of power by the Inspector of Police is tainted with illegality and that has been the only contention raised before the learned Magistrate.

A perusal of the two impugned orders would clearly show that the learned Magistrate, having given considerable thought and referring to the rulings relied on by the learned counsel for the petitioners before him in **Smt. Pushpalatha v. Deputy Commissioner of Police, DD-II, Hyderabad and others¹** and **T.Srinivasa Rao v. State and Koroor**

¹ 2003 (2) Law Summary 322

Vysya Bank² and distinguishing the fact-situation occurring in the cases referred to with that of the cases in hand, did not apply the ratio laid down in the cases referred to by the learned counsel opining that it is inapplicable. Further, opining that the truth or otherwise of the allegations leveled against the petitioners herein would see the light of the day, only after commencement of trial proceedings, the learned Magistrate dismissed the petitions in Crl.M.P.Nos.5 of 2013 and 6 of 2013 by the impugned orders.

Learned counsel for the petitioners would place reliance on the very same decisions relied on before the Court below and would submit that the said decisions were rendered in a different context, but not in the context of the cases in hand where an Officer inferior in rank to that of an Officer, who was actually directed to conduct investigation, has taken up the investigation.

Learned Additional Public Prosecutor for the State of Andhra Pradesh would place reliance in **H.N.Rishbud v. State of Delhi**³, wherein a Subordinate Officer was directed to conduct an investigation, which was held not to be an illegality. He would also refer to the provisions of Section 168 of the Code, which envisages that when any subordinate police officer has made any investigation under Chapter XII of the Code, he shall report the result of such investigation to the officer in charge of the police station.

² 1998 (4) ALD 599

³ AIR 1955 SC 196

Be that as it may, when the mandatory provision of Section 156 of the Code is seen, the opening words refer to the expression “Any officer-in-charge of a police station may...”. It is not the case of the petitioners that the Sub-Inspector of Police was not the Station House Officer of that particular police station. Therefore, it is difficult to accede to the view expressed by the learned counsel for petitioners that an illegality crept into in the orders under challenge on account of the Inspector of Police entrusting the investigation to the Sub-Inspector of Police. The peculiarity in the present case is that the Superior Officer i.e., Inspector of Police, in fact, directed the Sub-Inspector of Police to conduct the investigation. In that context, the learned Additional Public Prosecutor has relied on the ruling referred to hereinabove. Therefore, there is no merit in the present petitions.

Accordingly, these Criminal Petitions are dismissed at the stage of admission itself.

Miscellaneous applications, if any pending in this criminal petition, stand closed.

30th March, 2017
v v

A. SHANKAR NARAYANA, J