

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL PETITION No.7571 of 2011

ORDER:

This criminal petition is filed to quash crime No.55 of 2010, dated 07.11.2010, of Bantwaram Police Station, Ranga Reddy District.

2. The petitioners are accused Nos.1 and 2 and respondent No.2 is the *de facto* complainant in the aforesaid crime. Respondent No.1 is the State of Andhra Pradesh represented by its Public Prosecutor.

3. The brief facts of the case are that petitioner No.1 is the son of petitioner No.2. Petitioner No.2 filed O.S.No.58 of 2002 against one Ramnik Bai for injunction and the same was decreed on 27.02.2009. Petitioner No.1 filed an application before the Revenue Divisional Officer (R.D.O.), Vikarabad Division against Smt.Sulochana and got an order in his favour on 13.03.2007 and that as per the said order, R.D.O. set aside proceedings, dated 24.01.2003 and 05.02.2003. On 26.11.2010, the Deputy Inspector, Survey and Land Records conducted panchanama in respect of land in survey No.60 of Thurumavadi Village, Bantwaram Mandal, Ranga Reddy District, as per order, dated 30.09.2010 and issued sketch also. On 30.10.2010, the Tahsildar, Bantwaram Mandal issued notice to respondent No.2 - *de facto* complainant, his father and others. Petitioner No.1 obtained interim injunction against respondent No.2 - *de facto* complainant in I.A.No.192 of 2011 in O.S.No.70 of 2011, which has been extended from time to time till 28.08.2011 and claimed that he is the owner and possessor of land in survey No.60 admeasuring Acs.3.02 guntas. Aggrieved thereby, respondent No.2 – the *de facto* complainant gave a complaint to the Judicial First Class Magistrate, Vikarabad on 08.10.2010 with a request to refer the same to Bantwaram Police Station.

The learned Magistrate, however, referred the complaint to respondent No.1 – the Station House Officer (S.H.O.), Bantwaram P.S. for investigation and the S.H.O., in turn, issued F.I.R.No.55 of 2010 alleging that the petitioners committed the offences punishable under Sections 120-B, 380, 420, 447 and 506 I.P.C. Therefore, the petitioners have sought for quashing crime No.55 of 2010, dated 07.11.2010.

4. Heard the arguments of Mr.V.H.V.R.R.Swamy, learned counsel for the petitioners, and the learned Public Prosecutor (A.P.) appearing for respondent No.1. Notice issued to respondent No.2 has not been served. The learned counsel for the petitioners has submitted that the notice sent by him to respondent No.2 by registered post with acknowledgement due has also not been served. However, considering the fact that this criminal petition pertains to the year 2011 and a short point is involved in this case for disposal, the matter is taken up for hearing and disposal.

5. The learned counsel for the petitioners has mainly submitted that the learned Magistrate has not applied his mind while referring the matter for investigation to the Police, *vide* docket order, dated 22.11.2010, in crime No.55 of 2010, which reads as under:

“Complainant is present. This complaint is referred to SHO of P.S. Bantwaram under Section 156(3) Cr.P.C. for investigation and report by 22.11.2010.”

In support of his submission, the learned counsel has placed reliance on the decision of this Court in D.K.Pattanaik vs. Station House Officer¹, in particular, paragraph 26 thereof, which reads as under:

“26. At the pre-cognizance stage if the Magistrate was satisfied that a cognizable offence was made out, there was no

¹ 2008(2) ALT 541

necessity for him to direct any investigation by the Police. Similarly, where the Magistrate is satisfied that the allegations in the complaint do not disclose commission of any offence, no further question arises and he will refuse to take cognizance. The need for investigation by police is necessary only in cases where the Magistrate is prima facie satisfied that the allegations contained in the complaint point to the commission of an offence, but they require further investigation to enable him to finally decide whether to take cognizance of the offence or not. The Magistrate is therefore bound to apply his mind to know whether there are grounds to straightaway take cognizance of the offence under [Section 190](#) Cr.P.C., or refuse to take cognizance or to direct investigation of further facts before taking cognizance by exercising power under [Section 156\(3\)](#) Cr.P.C. Without application of mind, the Magistrate cannot decide which of the above mentioned three courses, as open to him, should be adopted.”

The learned counsel has, accordingly, submitted that unless satisfied that a cognizable offence was made out, there was no necessity for the Magistrate to direct investigation. The learned counsel has further submitted that the learned Magistrate has not even considered the facts and circumstances of the case, while referring the matter for investigation under [Section 156\(3\)](#) Cr.P.C.

6. The learned Public Prosecutor (A.P.) appearing for respondent No.1 – State has fairly conceded that the aforementioned docket order does not reveal that the learned Magistrate has considered the facts and circumstances of the case and satisfied himself that a cognizable offence was made out, while referring the matter for investigation.

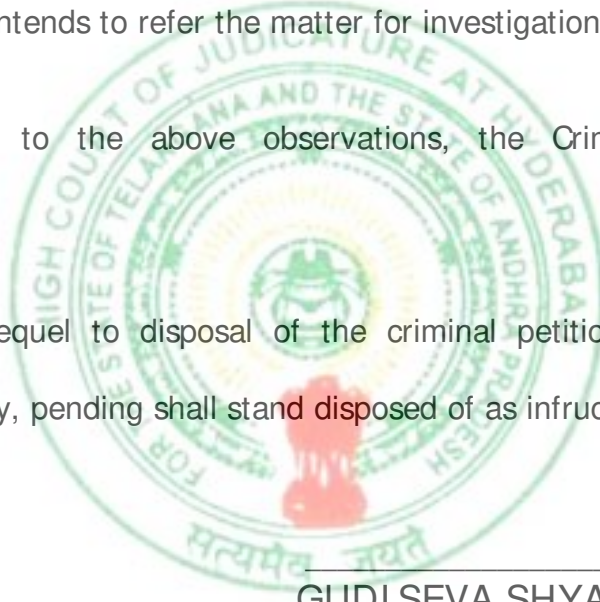
7. As observed in *D.K.Pattanaik (supra)*, it is the bounden duty of the Magistrate to consider the facts and circumstances of the case while referring the matter for investigation to the Police. The Magistrate shall also see whether the matter can be referred to the Police at the

pre-cognizance stage and whether a cognizable offence was made out or not. A perusal of the docket order, *prima facie*, shows that the learned Magistrate has not applied his mind to the above aspects and merely referred the matter for investigation to the Police.

8. For the aforementioned reasons, docket order, dated 22.11.2010, in crime No.55 of 2010 is set aside. Consequently, crime No.55 of 2010 is quashed. The learned Magistrate is directed to pass appropriate orders under Section 156(3) Cr.P.C. considering the facts and circumstances of the case and keeping in mind the criterion referred to in D.K.Pattanaik (*supra*), if he intends to refer the matter for investigation to the Police.

9. Subject to the above observations, the Criminal Petition is disposed of.

10. As a sequel to disposal of the criminal petition, miscellaneous petitions, if any, pending shall stand disposed of as infructuous.



GUDI SEVA SHYAM PRASAD, J

21st September, 2017
GHN