

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7110 OF 2017

ORDER:

Heard learned counsel for the petitioner/ *de facto* complainant of C.C.No.159 of 2015 pending on the file of the XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and learned Public Prosecutor appearing for the State, before ordering notice to respondent No.2/ accused and perused the impugned order of the lower Court dated 12.04.2017 in CrI.M.P.No.5890 of 2016 filed by the de facto complainant under Section 311 Cr.P.C. to summon Smt.T.Lakshmi Hemalatha, Joint Registrar, High Court of Andhra Pradesh, Hyderabad, Sri J.Nayak, Assistant Inspector General and Sri M.S.Singhal, Superintendent of Police, C.B.I., New Delhi, to appear and depose before the Court.

The sum and substance of the application before the lower Court covered by the impugned dismissal order and the grounds of attack in the petition on hand are that the accused herein filed a quash petition before this Court to quash the proceedings of C.C.No.37 of 2008 registered for the offence punishable under Section 628 of the Companies Act the then and Section 420 I.P.C. among other penal provisions and in

that quash petition, he filed a document styling as referred report filed by the C.B.I., New Delhi, of the subject matter was already investigated by C.B.I. at New Delhi and the quash petition consequently was allowed and the *de facto* complainant, pursuant to which, approached the Supreme Court and the Supreme Court set aside the order of quashing the proceedings and the Police subsequently investigated into and filed charge sheet, that was taken cognizance by the learned Magistrate as C.C.No.159 of 2015, is under trial and to prove that said document of the so called final referred report of the C.B.I. investigation is a fake one created by the 2nd respondent/ accused herein. In this case, summoning of the Joint Registrar of the High Court and the two officials of the C.B.I., New Delhi are required and with these facts when application filed, after contest, by the impugned order dated 12.04.2017 in CrI.M.P.No.5890 of 2016 in C.C.No.159 of 2015, learned XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, dismissed the same. The observations in dismissal of the same are that the petitioner himself mentioned that the investigating officer got issued a letter to the Assistant Inspector General, C.B.I. Vigilance Cell, with a request to furnish a report informing

whether any case was registered and any investigation made against the accused herein and they furnished information through letter dated 18.02.2013 saying no such case was found from the verification of the records of the C.B.I. and the said two letters issued by Sri J.Nayak, Assistant Inspector General and Sri M.S.Singhal, Superintendent of Police, C.B.I., New Delhi, respectively of February, 2013 were already filed before the Court and available in the case file to refer and depose by the investigating officer and thereby, there is no necessity to summon either the Joint Registrar of the High Court or the two police officials of C.B.I.

In fact, it is the submission of the learned counsel for the petitioner that the quash proceedings by relied on the certificate allowed by the High Court, set aside by the Supreme Court in directing to continue further investigation and on further investigation, police filed final report that was taken cognizance covered by the present C.C. under trial and the only thing to consider is whether there was any C.B.I. investigation and any referred report and the so called document placed reliance in the quash proceedings before the High Court by the 2nd respondent as accused to the quash petition is genuine or not is the once crux of the information

collected from the C.B.I. officials, which they say that there was no such crime or investigation, the investigating officer of the present C.C.No.159 of 2015 can speak the same and there is practically no necessity invoking Section 311 Cr.P.C.

Once that was the observation of the lower Court, for this Court while sitting against that there is nothing to interfere. However, it is made clear that after the evidence of the investigating officer, if at all the lower Court feels that any such requirement of summoning of officials or High Court Registrar, the lower Court is not powerless, because of the Second Part of Section 311 Cr.P.C. and Section 165 of the Evidence Act.

With the above observations, the Criminal Petition is disposed of.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:17-08-2017
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