

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4244 OF 2017

ORDER:

Heard both sides.

2. Leave about the other merits, as per the expression of the Hon'ble Apex in ***Priyanka Srivastav Vs. State of U.P.***¹, there must be an affidavit enclosed to the private complaint and there must be proof of giving of police complaint or sending to the Superintendent of Police by registered post, as the case may be, before filing of a private complaint, which are mandatory.

3. Now in the case on hand, it is one of the contentions in the quash petition of the judgment conditions are not complied with to entertain the private complaint including to refer the same to the police for investigation under Section 156(3) Cr.P.C.

4. The counsel for the 2nd respondent – complainant filed a copy of complaint with counter and the referral order mentioning about affidavit filed and the affidavit Para 12 also speaks about giving of police complaint, however, there is no proof or acknowledgment, much less, by sending by registered post, if at all by hand complaint not received and acknowledged.

5. Having regard to the above, once it is the core issue, the petition requires disposal, directing the trial court to call for from the police station any such copy of complaint given and any G.D. entry made and if it is there to consider as complaint, otherwise, by virtue of this order set aside the cognizance order and relegate

¹ [2015 (6) SCC 287]

the complainant by return of the complaint to file with proof of any giving of police complaint a fresh complaint. Needless to say, if at all, there is a proof of giving of complaint, the petitioner can raise these contentions available by purforth appearance by filing application for discharge under Section 239 Cr.P.C. Needless to say, further grievances left open and pending investigation, if at all any arrest is required for offences punishable not above seven years, the police shall strictly follow Section 41A of Cr.P.C. and the guidelines laid down by the Hon'ble Apex Court in ***Arnesh Kumar Vs. State of Bihar***².

6. Accordingly and with the above direction, this criminal petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed.

21.08.2017
SS

DR.B.SIVA SANKARA RAO, J

² 2014 (5) SCC 324