

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1915 of 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') requesting to quash the proceedings in C.C.No.883 of 2015 on the file of the Additional Judicial Magistrate of First Class, Huzurabad, Karimnagar District.

2. The petitioner is the sole accused and he alleged to have committed the offences punishable under Sections 323 and 506 of the Indian Penal Code, 1860 (IPC).

3. Heard Sri Nazir Khan, learned counsel for the petitioner and learned Additional Public Prosecutor for the State of Telangana.

4. Substantially, the argument advanced by the learned counsel for the petitioner is that the learned Magistrate, while referring the complaint to the police, has not applied his mind, and the offences are non-cognizable offences, as such, the present proceedings cannot be continued.

5. Learned counsel for the petitioner has placed reliance on the decision of this Court in **Juvvadi Raghu and others v. State, through SHO., P.S., Vemulawada, Karimnagar District and another¹**, wherein, this Court, while dealing with the very same offences in alike situation, held that the investigation without permission of the Magistrate is contrary to the provisions of the

Cr.P.C. In the said decision, this Court while referring to the provision of Section 155 of Cr.P.C. in the context of non-cognizable offences that being the offences under Sections 323 and 506 IPC, quashed the proceedings therein. Further, this Court in the said decision referred to a notification, that was issued pursuant to the amendment by way of an Ordinance No.6 of 1972 published in A.P. Gazette Part I, extraordinary dated 09.12.1991, wherein the offence punishable under Section 506 IPC was made cognizable and also observed that the said notification was in force for a period of six months and thereafter no notification was issued for its extension or there was any further amendment or ordinance.

6. The said decision would squarely apply to the fact-situation occurring in the instant case.

7. Learned counsel for the petitioner also relied on a decision rendered by this Court in **S. Purnachandra Rao and another v. State of A.P., rep., by it's Public Prosecutor High Court of A.P. and another**², while dealing with a situation relating to the offences punishable under Sections 504, 506 and 120-B IPC, which are non-cognizable offences, held that the Magistrate has to give reasons while referring the case under Section 156(3) Cr.P.C. or while taking cognizance of the offence and shall also give reasons while empowering the police officer to investigate into a non-cognizable offence or referring the case to police, and, thereby, set aside the order

¹ 2006 (3) ALT (CrL.) 167 (A.P.)

² 2015 (1) ALT (CrL.) 49 (A.P.)

passed by the Magistrate, but, however, remanded the matter for fresh consideration. In the said decision, this Court had the occasion to refer to the purport of Sections 155(2), 156(3), 239, 240 and 482 of the Code.

8. Learned counsel for the petitioner relied on yet another decision of the Hon'ble Supreme Court in **Priyanka Srivastava and another v. State of Uttar Pradesh and others**³, wherein it is held that there must be an affidavit in support of complaint under Section 156(3) Cr.P.C. and while exercising power under Section 156(3) Cr.P.C., it is the duty of the Magistrate to satisfy the pre-conditions so as to prevent the abuse of process.

9. In the present case, there is no such affidavit in support of the complaint under Section 156(3) Cr.P.C. as observed in the said decision.

10. Learned counsel for the petitioner submits that if it is the case of the de facto complainant that the police have not taken any action on the complaint given by him, he ought to have approached the Superintendent of Police for further redressal of his grievance as per mandatory provisions under Section 154 Cr.P.C., but he did not do so. However, in the present case, learned Magistrate referred the complaint to the police concerned under Section 156(3) Cr.P.C.

11. The learned Additional Public Prosecutor would support the action of the police on the premise that since a direction was given by

³ (2015) 6 SCC 287

the learned Magistrate under Section 156(3) Cr.P.C., the police have no alternative except to conduct investigation and file charge sheet.

12. Be that as it may, when the offences alleged are non-cognizable offences, certainly, the learned Magistrate was not obligated to refer to the police under Section 156(3) of the Cr.P.C. and the police ought not to have conducted investigation unless the reference is under Section 155(2) of the Cr.P.C.

13. In that view of the matter, the decision in Juvvadi Raghu and others (supra) would squarely apply to the fact-situation in the present case.

14. Therefore, the criminal petition is allowed quashing the proceedings in C.C.NO.883 of 2015 on the file of the Additional Judicial Magistrate of First Class, Huzuarabad, Karimnagar District.

15. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 9, 2017.

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