

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2274 OF 2017

ORDER:

The return endorsement, dated 10.03.2017, made by the learned Judicial Magistrate of First Class, Kota, SPSR Nellore District, on a petition filed by the *de facto* complainant/petitioner herein under Section 164 Cr.P.C., is substantially in question before this Court, though, the request made by the petitioner in this petition is to direct the learned Magistrate to record his statement under Section 164 Cr.P.C in Crime No.15 of 2017 of Guduru II Town Police Station.

When the petitioner filed a petition before the Court below to record his statement under Section 164 Cr.P.C., the learned Magistrate has made an endorsement on 10.03.2017 to the effect that how he has power to record 164 Cr.P.C statement of the *de facto* complainant when the petition is filed by the learned Advocate to be explained with relevant legal position.

Sri Venkat Rao Ravulapalli, learned counsel for the petitioner, would place reliance on the decision of the Hon'ble Supreme Court in **State of Karnataka vs. Shivanna**¹ and points out the expression of the Hon'ble Supreme Court contained in paragraph '10.1', which is in the form of a command made to the Investigating Officers, and it reads thus:

“Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take to any Metropolitan/preferably Judicial Magistrate

¹ (2014) 8 SCC 913

for the purpose of recording her statement under Section 164 Cr.P.C should be handed over to the Investigating Officer immediately with a specific direction that contents of such statement under Section 164 should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C is filed.”

When the aforesaid authority is available to the learned counsel on record for the petitioner/*de facto* complainant/victim, the same can be brought to the notice of the learned Magistrate by re-submitting the petition returned on 10.03.2017.

In view of the above, the petitioner is directed to approach the Judicial Magistrate of First Class, Kota, SPSR Nellore District, and re-submit the petition, which was returned with endorsement, dated 10.03.2017, and the learned Magistrate is directed to dispose of the same in accordance with law declared by the Hon’ble Supreme Court in the decision referred to above.

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

A. SHANKAR NARAYANA, J

23rd March, 2017

v v