

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.7376 of 2017

ORDER :

Heard the learned counsel for the petitioner/ A.2 of the STC No.39 of 2016 pending on the file of the Judl.Magistrate of First Class, Chevella, and also the learned Public Prosecutor representing the 2nd respondent-State and for there is no representation for the 1st respondent/ defacto-complainant though proof of service received, taken as heard and perused the grounds urged in the quash petition and the investigation material in filing the petty case chargesheet right from the report and the interim order of this Court dt.31.08.2017. the interim order reads as follows:-

“ Heard learned counsel for the petitioner/ A.2 of S.T.C.No.39 of 2016 on the file of the Judicial First Class Magistrate, Chevella, Ranga Reddy District, which is outcome of the report of the 1st respondent/ *de facto* complainant and pursuant to it the Police, Sankarpally, represented by the Public Prosecutor for the 2nd respondent made a G.D. entry and sought permission of the Magistrate having filed the final report.

It is the contention of the learned counsel for the petitioner/ A.2 that there is no permission to the Police to register the crime or to file the final report in the form of charge sheet as S.T.C. to take cognizance by the learned Magistrate and it is with the final report in the form of S.T.C. application for permission sought that was on 01.08.2016 and the same was accorded in taking cognizance of the case on 02.08.2016, thereby unsustainable. It is to be ascertained from the learned Magistrate by calling for report besides learned Public Prosecutor to submit as to the crime registered and the chargesheet filed after according permission or the permission sought under Section 155(2) Cr.P.C. while filing the final report, in the event of first one, it is as per the procedure and in the event of second one, it is unsustainable.

Hence, there shall be stay of all further proceedings including appearance of the petitioner/ A.2 in S.T.C.No.39 of 2016 on the file of the Judicial First Class Magistrate, Chevella, Ranga Reddy District, for a period of six weeks.

Notice before admission.

Learned counsel for the petitioner is permitted to take out personal notice to respondent No.1 by registered post with acknowledgment due and file proof of service into the Registry.

Post on 04.10.2017 in motion list, for hearing and instructions of learned Public Prosecutor.

Meanwhile, the Registry is directed to call for the report from the District Judge concerned in relation to the above facts.”

From this material definitely as on the date the crime registered, there is a bar u/ sec.155(2)CrPC for the permission accorded by the learned Magistrate to register a crime in non-cognizable offence was subsequently on 02.08.2016 for the permission sought on 01.08.2016 registered is before that 02.08.2016. Once such is the case, the permission cannot relate back to the time of registering the crime. Thereby the registration of the crime and the filing of the final report as a petty case are unsustainable. However, this is not a bar for the police to register fresh crime for the permission of the learned Magistrate already accorded on 02.08.2016 and proceed according to law.

With these observations, the Criminal Petition is disposed of. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:24.10.2017
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Dr. B.SIVA SANKARA RAO J,