

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10597 of 2017

ORDER:

This petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C') to quash the proceedings in Crime No.86 of 2017 of Madanapalle Taluk Police Station, Chittoor District, for the offences punishable under Sections 307 and 420 read with 34 IPC.

The petitioners are A1 and A4 in the private complaint, which was referred to the police under Section 156(3) Cr.P.C. for the offences referred above. On the strength of the same, the police registered a case in Crime No.86 of 2017 and issued FIR against the petitioners.

Learned counsel for the petitioners submitted that as per the decision of the Apex Court in **Priyanka Srivatsav v State of Uttar Pradesh**¹ when a private complaint is presented before the Magistrate, he has to apply his mind and call upon the complainant to examine himself on oath, so that he can treat it as a private complaint.

Now the petitioners challenged FIR only on two grounds. The first ground is that there was earlier complaint against the police and others and that the matter was reported to Human Rights Commission and they bore grudge and got filed the private complaint and registered the case on reference under Section 156(3) Cr.P.C. The second ground urged before this Court is that the private complaint is not in compliance of the directions issued by the Apex Court in **Priyanka Srivatsav's** case.

¹ 2015(4) Scale 120

As seen from the material on record no affidavit is filed to refer the case to the police by exercising power under Section 156(3) Cr.P.C. The reason for insisting affidavit by the Court is to make them more responsible for the allegations made against the accused in the private complaint filed by an individual.

Even otherwise, if for any reason, the Magistrate did not record the statement before taking cognizance of the offence, this is only a mistake of the Court based on the principle laid down by the doctrine of *actus curiae neminem gravabit*, which means that the act of the Court shall not prejudice any one, for its mistake and the party cannot be penalised and the case of the complainant cannot be thrown out at the threshold. The same principle is laid down in

Amarjeet Singh & Ors vs Devi Ratan and others² as follows:

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Shiv Shankar & Ors. Vs. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Suppl. (2) SCC 726; M/s. GTC Industries Ltd. Vs. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation Vs. C.L. Mishra, (2005) 8 SCC

In Ram Krishna Verma & Ors. Vs. State of U.P. & Ors., AIR 1992 SC 1888 this Court examined the similar issue while placing reliance upon its earlier judgment in Grindlays Bank Limited Vs. Income Tax Officer, Calcutta & Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed

² AIR 2010 SC 3676

and petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

In **Neeraj Kumar Sainy and others v state of Uttar Pradesh and others** (S.L.P.No.27906 of 2016) at para 24 the Apex Court reiterated the same principle while holding that no one should suffer any prejudice because of the act of the Court. In later judgment in **Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Another**³ at para 12 placing reliance on **Shastri Yagnapurushdasji & Ors. V. Muldas Bhundardas Vaishya & Anr**⁴, the Apex Court held that it is an elementary rule of justice that no party should suffer for the mistake of the Court or its office. While expressing the similar view in **Jayalakshmi Coelho vs Oswald Joseph Coelho**⁵, the Apex Court held that the principle behind the provision is that no party should suffer due to mistake of the Court and whatever is intended by the Court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.

Thus, from the settled law laid down by the Apex Court no prejudice would be caused to any one of the parties on account of the mistake of the Court or its staff. Therefore, I find that it is appropriate to issue a direction to the Magistrate to receive affidavit by issuing notice to the complainant within specific time and in case no affidavit is filed, the Magistrate is at liberty to pass appropriate orders.

With the above direction, the criminal petition is disposed of.

³ AIR 2006 SC 269

⁴ AIR 1966 SC 1119

⁵ AIR 2001 SC 1084

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

M. SATYANARAYANA MURTHY,J

27.12.2017
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