

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.13223 of 2016

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of certiorari, to declare the FIR No.131 of 2016 dated 01.04.2016 of Begumpet Police Station, Hyderabad registered for the offence punishable under Section 403 IPC, as illegal and arbitrary and quash the same.

2) The facts in issue are as under :-

The informant, who is the 4th respondent herein, alleges that the accused, who is the petitioner herein, offered to give collateral security to the informant's company viz., Billion India Pvt. Ltd., by receiving the car of the 4th respondent bearing No.A.P.10-BC-2324. But neither provided security nor returned the car. The 4th respondent is alleged to have paid 17 instalments towards car loan and when he stopped payment, the HDFC Bank issued a notice to the informant, demanding payment of the balance of loan amount. Then the informant lodged a report before the S.H.O., Begumpet P.S., against the accused. Since the offence is non-cognizable one, the S.H.O., Begumpet P.S., sought permission from the XI Addl. Chief Metropolitan Magistrate at Secunderabad and after obtaining

permission, registered a case in Crime No.131 of 2016 of Begumpet Police Station for the offence punishable under Section 403 IPC.

3) The averments in the affidavit filed in support of the present writ petition are as under :-

During the year 2015, the 4th respondent, along with his son approached the petitioner, who is a realtor, with a request to advance a hand loan of Rs.5,00,000/- and also took an advance of Rs.1,00,000/-. In respect of the said transaction, the fourth respondent executed a pronote on 27.09.2015 and also handed over his Innova Car bearing No.A.P.10-BC-2324 as security. At the time of execution, the fourth respondent promised to pay the instalments of the loan with HDFC bank. It is further stated that when the petitioner demanded the fourth respondent to repay the hand loan, the fourth respondent refused to pay the same and was postponing the same on one pretext or the other. Thereby, the petitioner was constrained to pay six instalments amounting to Rs.2,01,300/-, which was due by the fourth respondent. It is also stated that the petitioner paid an amount of Rs.8,01,300/- to the fourth respondent. It is further stated that finally the fourth respondent approached the petitioner with a proposal to sell his car for an amount of Rs.12,20,000/-, and undertook to clear the outstanding amount with HDFC Bank and also repay the dues to the petitioner. Then the petitioner made an offer stating that he would pay the balance amount

and buy the car, but the respondent went back on his promise and lodged the report.

4) It is stated by the petitioner that the contents of the FIR do not disclose any dishonest intention on the part of the petitioner, which is a pre requisite to attract Section 403 IPC. Further the respondents 3 and 4 have been calling upon him to come to the police station for a settlement. Hence, the petitioner states that when the ingredients constituting the offence alleged are absent, such a report is liable to be quashed.

5) A counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition.

6) Though various grounds are urged, the learned counsel for the petitioner would submit that though the offence alleged is non-cognizable, the Magistrate while referring the matter to the police under Section 155(2) Cr.P.C., ought to have applied his mind to the facts in issue. He placed on record, the docket order dated 31.03.2016 to show that there was no application of mind while referring the matter to the police, which lead to registration of the F.I.R.

7) The learned Magistrate, while referring the matter to the police on 31.03.2016 made the following endorsement:-

"The requisition filed by P.S. Begumpet to register non-cognizance offence under Section 403 IPC complaint given by Gendamury Manindra Nath dated 23.03.2016 praying to this Hon'ble Court to give permission to register the case u/s.403 IPC. Original complaint enclosed. Permitted."

8) A reading of the said order does not anywhere indicate application of mind to the facts in issue. The importance of application of mind while passing orders came up for consideration before the Apex Court in **Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla and brothers**. A Full Bench of the Allahabad High Court also dealt with the same in **Shyam Lal Sharma v. King Emperor**¹. Relying on the above judgments, this Court in **S.Purnachandra Rao and another v. State of Andhra Pradesh rep. by its Public Prosecutor, Highi Court of A.P. and another**² held as under :-

"25. From the above, it is clear that the Magistrate while either referring the case to the police under Section 156(3) Cr.P.C., or while ordering investigation into a non-cognizable offence under Section 155(2) Cr.P.C., has to show application of mind to the facts of the case. It may not be necessary for the Magistrate to pass a reasoned order. The order under reference or order directing registration of a non-cognizable offence should contain some information showing application of mind to the case on hand."

9) Having regard to the fact that while referring the matter under Section 155(2) Cr.P.C., granting permission to register a case on the basis of the said report, the learned Magistrate failed to apply her mind or atleast state that an offence is *prima facie* made

¹ CRL.L.J. 1949(0) 719

² 2014 SCC Online Hyd 1185

out. The said order only refers to according permission to conduct investigation on the basis of the report given by the informant. It does not reflect anything more than lodging of a report. Therefore, it cannot be said that the impugned order passed by the Magistrate was after applying his mind to the facts of the case. It appears to be a case where the learned Magistrate in a routine manner accorded permission for registration of a crime and investigation of the case. For the aforesaid reasons, the order under challenge deserves to be set-aside. Hence, the order under challenge is set-aside and the matter is remanded back to the Court of XI Addl. Chief Metropolitan Magistrate at Secunderabad directing him to pass order in accordance with law, while referring the same to police under Section 155(2) Cr.P.C.

10) With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:12.04.2017

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