

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

I.A.No.2 of 2018
IN/AND
WRIT PETITION No.1847 of 2018

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India to call for the records relating to Docket order, dated 09.05.2017 in C.C.No.1203 of 2015 pending on the file of Court of XI Metropolitan Magistrate at L.B.Nagar, Ranga Reddy District, and quash the same.

2. I.A.No.2 of 2018 is filed to implead the petitioner as proposed respondent No.4 in the main writ petition on the ground that he filed a private complaint before respondent No.2 and the same was referred to 3rd respondent-police. The police registered a case against the writ petitioner and her mother and after investigation, charge sheet is filed, the same is numbered as C.C.No.1203 of 2015 and the learned Magistrate has taken cognizance on 31.10.2015 for the offences punishable under Sections 198, 199, 406 and 420 IPC and Section 12 (1) (b) of the Passports Act and summons were issued to the accused. Though counter-affidavit is filed opposing the petition, this Court, deems it appropriate to allow the petition as the implead petitioner is proper and necessary party for adjudication of *lis* in the writ petition as he is the *de facto* complainant. Accordingly, I.A.No.2 is allowed impleading the petitioner as proposed respondent No.4 in the main writ petition.

3. The case of the writ petitioner is that the complaint made by the 4th respondent was registered as a case in Crime No.527 of 2014 on the file of the 3rd respondent. On completion of

investigation, the police filed charge sheet, which was numbered as C.C.No.1203 of 2015 on the file of XI Metropolitan Magistrate, Cyberabad at L.B.Nagar. When the petitioner required a copy of the charge sheet for the purpose of filing the same in O.P.No.378 pending on the file of Judge, Family Court, filed an application which was returned with an endorsement "charge sheet along with 161 statement were returned to the concerned Police Station" vide C.A.No.31035 of 2017. Aggrieved by the same, the present Writ Petition is filed.

4. Learned counsel for the petitioner submits that once cognizance is taken and the matter is coming up for trial, the trial Court cannot return the charge sheet without there being any judicial order and without there being any provision of law; that suppressing the same, the charge sheet was returned to 3rd respondent to cure the defects in the investigation, which itself shows that the 2nd respondent is biased and he is bent upon to help respondent No.4, who is harassing the petitioner like anything; that the petitioner had complained several times to the Presiding Officer, but no action has been taken; that once cognizance is taken under Section 190 Cr.P.C., the role and duty of the police comes to an end and hence, he prays to quash the impugned order.

5. On the other hand, learned Assistant Government Pleader for Home appearing for the respondents submits that the husband of the petitioner i.e., respondent No.4 herein filed W.P.No.2639 of 2017 and this Court dismissed the said writ petition leaving it open to the learned Magistrate to return the charge sheet for not

obtaining proper sanction for proceeding with the case and for presentation of charge sheet along with requisite sanction.

6. It is stated that the petitioner came to know that the police filed charge sheet again before XI Metropolitan Magistrate and numbered as Calendar Case No.151 of 2018.

7. Learned counsel for impleaded proposed respondent No.4 also submits that the writ petitioner is a party to W.P.No.2639 of 2017 filed by him and she is aware of the order passed in the said Writ Petition. He further submits that when the 2nd respondent returned the charge sheet pursuant to the order passed in W.P.No.2639 of 2017, unnecessarily she is making allegations against the Court by impleading in Writ Petition.

8. In this case, it is to be seen that W.P.No.2639 of 2017 was filed declaring the action of the 3rd respondent in not obtaining sanction order for prosecuting the accused under Section 12 (1) (b) of the Passport Act basing on the crime registered on 07.11.2014, as arbitrary and illegally and for consequential order directing the 3rd respondent therein to obtain the sanction order for prosecuting Calendar Case.No.1203 of 2015. Admittedly, the petitioner is the 4th respondent in W.P.No.2639 of 2017 and she appeared in the said writ petition. The observation in the said writ petition reads thus:

“In view of the above legal position, no writ of mandamus can be issued on the facts of the case to the investigating officer to obtain sanction after the trial Court had taken cognizance of the offence, which cognizance is invalid on the face of it. The only course left open to the learned Magistrate is to return the charge sheet for not

obtaining proper sanction for proceeding with the case and for presentation of charge sheet along with requisite sanction. It is for the investigating officer to obtain necessary sanction and what the investigating officer is going to do after the charge sheet is returned by the concerned Magistrate cannot be predicted at this stage and it is open to the petitioner to take appropriate proceedings as and when the cause of action arises.”

9. Respondent No.3 filed counter-affidavit, wherein it is clearly stated that after careful perusal of the orders passed by this Court in W.P.No.2639 of 2017, the Court of XI Metropolitan Magistrate, Cyberabad at L.B.Nagar, returned the charge sheet on 09.05.2017 for not obtaining proper sanction for prosecution of the case. It is stated that the respondent obtained sanction orders from the Government to prosecute the accused. After obtaining orders, the investigating agency re-submitted the charge sheet before the Court of XI Metropolitan Magistrate, Cyberabad at L.B.Nagar on 17.01.2018 and the Court taken the same on file and assigned Calendar Case No.151 of 2018. It is stated that the petitioner, being party to W.P.No.2639 of 2017, deliberately filed the present writ petition stating that the 2nd respondent Court cannot return the charge sheet after taking cognizance.

10. Though the petitioner is fully aware of true facts and order passed in W.P.No.2639 of 2017, filed present writ petition by making unnecessary allegations against the Court. Even no reply affidavit is filed to the counter filed by the 3rd respondent. This shows that intentionally the petitioner filed the present frivolous writ petition without any basis, making allegations against the Court by impleading the same, which took cognizance, which is

deprecated more so petitioner is an Advocate. In view of the same, the Writ Petition is liable to be dismissed with costs.

11. Accordingly, the Writ Petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) payable to the Telangana State Legal Services Authority, Hyderabad.

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

AUGUST 23, 2018
YVL

A.RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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Date:23.08.2018