

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NOS. 6853 OF 2007, 7710 OF 2007 AND 4272 OF 2008

COMMON ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader for respondents.

2. The prayer sought in the Writ Petitions are as under:

W.P.No. 6853 OF 2007:

"....to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus to the respondent 1 to 3 to furnish the information of the said statements recorded by the respondent No.1 within a week daytime in the interest of justice."

W.P.No. 7710 OF 2007:

"....issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus to the respondents No.1 to submit the report, sanction for the prosecution of respondent No.7/accused 5 in C.C. Sr. No. 9696/04 on the file of the Addl. Judicial Magistrate of 1st Class at Tadepalligudem within a week daytime in the interest of the justice."

W.P.No. 4272 OF 2008:

"....to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the letter dt. 20-8-2007 addressed to the Additional Judicial Magistrate First Class, Tadepalligudem, W. G. District by the 1st respondent is arbitrary, ultra vires and hence illegal and direct respondent No. 1 to issue the sanction for prosecution of respondent No. 4 herein in C. C. Sr. No. 9696/2004 on the file of the AJMFC at Tadepalligudem in the interest of justice."

3. Since the issue involved in all the three Writ Petitions relate to prosecution of Si J.Ch.Abbulu, A.S.I. 482, the then in-charge S.H.O., Pentapadu P.S, West Godavari district, i.e., respondent No.7 in W.P.No.7710 of 2007, with the consent of both the counsel, common order is being passed.

4. The facts led to filing of these three Writ Petitions are that on 17.7.2004, one SPuroshothama Nanaji, lodged a complaint stating that while he was diverting water into his fish tank, one M.Satyanarayana Reddy (accused No.1 in Cr.No.75 of 2004), SPalla Reddy and SAnuradha, beat him. Pursuant thereto, Cr.No.75 of 2004 dated 17.7.2004 for the offence under Section 324 read with 34 IPC was registered on the file of Pentapadu P.S. After completion of the investigation, a charge sheet was filed on 12.8.2004. The Court below, after taking cognizance of the offence, numbered the matter as C.C.No.82 of 2005. However, in respect of the very same incident, one M.Satyanarayana Reddy, filed a private complaint against SPuroshothama Nanaji (complainant in Cr.No.75 of 2004) and three others on the file of the Court of learned Additional Judicial First Class Magistrate, Tadepalligudem. The said complaint was referred to Pentapadu P.S. under Section 156 (3) of Cr.P.C. Accordingly, the Station House Officer, Pentapadu P.S. registered the said complaint as Cr.No. 24 of 2005 dated 22.2.2005 for the offence under Sections 352, 355, 447, 506, 509 read with 34 IPC. After completion of investigation, the matter was closed as civil in nature. Against the said report of closing the matter as civil in nature, said M.Satyanaranaya Reddy filed a protest petition and the same was allowed leading to numbering of the matter as C.C.No.372 of 2007 which is also pending consideration before the learned Additional Judicial First Class Magistrate, Tadepalligudem. In fact, the complaint lodged by M.Satyanarayana Reddy in the year 2004 against respondent No.7 in WP.No.7710 of 2007 i.e., Si J.Ch.Abbulu, ASI-482 and others was

entrusted to the in-charge Inspector of Police, Tadepalligudem, Rural Circle who conducted an enquiry and submitted report stating that the allegations made by the complainant against the police officials are found to be false. Since the petitioner in WP.No.6853 of 2007 i.e., M.Satyanaraya Reddy filed a complaint against respondent No.7 in Writ Petition No.7710 of 2007, being the Assistant Sub-Inspector of Police, the matter was referred to the Government by the learned Additional Judicial First Class Magistrate, Tadepalligudem for necessary action. The Government, after examining the matter and after calling for the reports from the Superintendent of Police and the DGP of West Godavari district, found that there was no sufficient material to prosecute the said J.Ch.Abbulu. The said decision was communicated to the Additional Judicial Magistrate of First Class, Tadepalligudem vide letter No.10611/Legal-II/A1/2007 dated 20.8.2007 by the Principal Secretary to Government, Home (Legal-II) Department, Government of Andhra Pradesh.

5. The specific case of the petitioners in all the three Writ Petitions is that during the course of investigation in Cr.No.75 of 2004, the respondent Police have recorded the statements of one Jonnada Venkata Rao and one Girijala Anjaneyulu. However, the statements of those witnesses were not available on record. In fact, according to the petitioners, in the said statements, they have categorically stated about the highhandedness of respondent No.7 i.e., J.Ch.Abbulu, ASI. Writ Petition No.6853 of 2007 is filed for furnishing the information relating to the said statements recorded by the Sub-Inspector of Police, Rural P.S. Tadepalligudem, West

Godavari district. Writ Petition No.7710 of 2007 is filed seeking a direction from this Court to submit report relating to the sanction for prosecuting respondent No.7 i.e., J.Ch.Abbulu, ASI 482 in CC.Sr.No.9696 of 2004 on the file of the Additional Judicial Magistrate of First Class at Tadepalligudem.

6. Writ Petition No.4272 of 2008 is filed questioning the proceedings issued by the Government of AP in Lr.No.10611/Legal-II/A1/2007 dated 20.8.2007 stating that there is no material evidence to prosecute Si J.Ch.Abbulu, ASI in Cr.No.75 of 2004 at Pentapadu P.S, West Godavari district.

7. The respondent Nos. 1 to 3 filed a common counter affidavit denying the material allegations made in the affidavit filed in support of the Writ Petition and contended inter-alia that the allegations made against J.Ch.Abbulu, ASI are false since no material was found from the reports of the Superintendent of Police, West Godavari district and the Director General of Police and contrary to the record of investigation in Cr.No.75 of 2004 including the wound certificate issued by the medical Officer in respect of the complainant in the said complaint. The registration of Crime No. 75 of 2004 and investigation conducted in the said crime is nothing to do with the civil or property rights of the petitioner apart from other aspects. In fact, the petitioner filed a reply affidavit reiterating the same facts mentioned in the affidavit filed in support of the Writ Petition.

8. Learned counsel for the petitioners in all the three Writ Petitions strenuously contended that the respondents intentionally suppressed the information relating to recording of statements of

J.Venkata Rao and G.Anjaneyulu for the purpose of protecting respondent No.7.

9. On the submissions made by the learned counsel, this court, on 30.8.2008, directed respondent No.3 to produce the record pertaining to the order dated 21.10.2010 i.e., furnishing of statements of the above said witnesses by 10.9.2018 or if it was already destructed, to produce the particulars of the destruction proceedings by the next date without fail.

10. Pursuant to the said orders, the Superintendent of Police, West Godavari district filed an affidavit dated 14.11.2018 stating that the Sub-Inspector of Police, Tadepalligudem P.S (Sundara Raju) recorded statements of Jonnada Venkata Rao and Girijala Anjaneyulu on 30.5.2004, which formed part of the enquiry proceedings vide C.No.157/City Civil Court/Camp.SP/2004 of the Office of the Superintendent of Police, West Godavari district. Though sincere efforts were made to find the correspondence relating to the enquiry in his office, the same was not found as the same was destroyed. The said correspondence pertains to the year 2004 and it was kept in the store room of the District Police Office, West Godavari district. Since the District Police Office, West Godavari was old, it was demolished in the year 2008. Subsequently, the correspondence records were shifted to Old Police Quarters, Euru. After completion of construction of the new building of Police Office, West Godavari district, the correspondence records were shifted to new building. However, the record in question was destroyed due to bad weather, pests and worms. In this regard, the Administrative Officer, Office of the

Superintendent of Police, West Godavari district has given the Endorsement vide C.No.5220/C1/2018 dated 1.11.2018. As such, the statements of the above said two persons which formed part of the enquiry, are not available. However, it is also stated that the statements of the above said two persons recorded by the Investigating Officer in Cr.No.24 of 2005 under Section 161 (3) Cr.P.C. are available on record. It is relevant here to mention that the said statements have been placed on record by the learned counsel for the petitioner before this Court.

11. In the light of the said affidavit, this Court is satisfied that the record sought by the petitioner, since destroyed, the same is not available and cannot be furnished to the petitioner.

12. In the light of the above, this Court is of the opinion that no further orders are required in Writ Petition No.6853 of 2007 and accordingly, the same is dismissed.

13. In the light of the proceedings issued by the Government of Andhra Pradesh in Letter No.10611/Legal-II/A1/2007 dated 20.8.2007, no further orders are required in Writ Petition No.7710 of 2007 and the same is dismissed as infructuous.

14. As far as Writ Petition No.4272 of 2008 is concerned, in the proceedings Letter.No. 10611/Legal-II/A1/2007 dated 20.8.2007, the Government, after careful examination of the remarks of the Superintendent of Police, West Godavari and Director General of Police, reported that there is no material evidence to prosecute J.Ch.Abbulu in Cr.No.75 of 2004. That apart, the in-charge Inspector of Police, Tadepalligudem, Rural Circle who conducted enquiry into the complaint lodged by the petitioner also reported

that the allegations of the petitioner against the police officials are found to be false and baseless. On these two grounds, this Court finds no merit in the Writ Petition and accordingly, Writ Petition No.4272 of 2008 is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P.KESHA VA RAO,J

Date: 16.11.2018

KPM

