

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 11 of 2016

ORDER:

The action of respondent, in misplacing the record relating to Crime No.142 of 2007, and proceeding to dispose of C.C.No.1218 of 2008 (Crime No.233 of 2006 on the file of Kankipadu Police Station, Vijayawada), is questioned in the Writ Petition.

In the affidavit filed in support of the Writ Petition, it is stated that the record relating to Crime No.142 of 2007 has been misplaced in the office of I Metropolitan Magistrate, Vijayawada, Krishna District, and a counter case was also filed in the same Court. The Magistrate, due to misplacement of record in Crime No.142 of 2007, is proceeding to dispose of C.C.No.1218 of 2008, which is a counter case, and, therefore, sought a direction to the Magistrate to dispose of Crime No.142 of 2007 along with C.C.No.1218 of 2008.

As per the contents of the writ affidavit, petitioner filed a case in Crime No.142 of 2007 on the file of Kankipadu Police Station, Vijayawada, and the same was referred by police as false. Subsequently, protest petition was filed on 28.07.2009 before the I Metropolitan Magistrate, Vijayawada, Krishna District, and the same was adjourned to 10.08.2009 for recording the sworn statement and, during the course of enquiry, witnesses were examined and the Magistrate ought to have taken cognizance of the same as the records in the

said crime have been misplaced. The case filed against the petitioner in Crime No.233 of 2006 was taken on file in C.C.No.1218 of 2008. Petitioner, therefore, sought two reliefs in the Writ Petition, firstly, to trace the misplaced record in Crime No.142 of 2007 and dispose of along with counter case viz. C.C.No.1218 of 2008, otherwise, his rights would be prejudiced.

This Writ Petition is filed against the I Metropolitan Magistrate, Vijayawada, Krishna District. Neither petitioner is present nor there is any representation on his behalf.

Prima facie the record shows that the learned Magistrate has not passed orders on the protest petition filed in Crime No.142 of 2007 and proceeding to dispose of C.C.No.1218 of 2008 which is stated to be a counter claim. Hence, it is appropriate to pass the following order:

If the record in Crime No.142 of 2007 is really misplaced, the Trial Court has to trace the record or reconstruct the record, and pass appropriate orders in that case. If the record is not misplaced, and if the case is connected with C.C.No.1218 of 2008, the petitioner may move an application before the concerned Court to try both the cases together. The learned Magistrate may consider the representation of the petitioner, and dispose of both the cases in accordance with law.

The Writ Petition stands disposed of accordingly.

Miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD, J

Date:23.04.2018
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