

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.7156 of 2014

% Dated 14.12.2018

K. Yugender Reddy S/o.K. Shanker Reddy
Aged about : 40 years, Occupation: Advocate,
R/o.MIGH 40, New Santoshnagar,
Hyderabad and another.

....Petitioners

VERSUS

\$ The State of Telangana,
Represented by Public Prosecutor,
High Court at Hyderabad and another

... Respondents

! Counsel for Petitioners : Sri K. Yugender Reddy

^ Counsel for Respondent : Public Prosecutor

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2002 (4) ALT 456
2. 1999 (2) ALD (CrI.) 436
3. 2000 (2) ALT (CrI.) 91 (AP)

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**CRIMINAL PETITION No.7156 of 2014****ORDER :**

The petitioners are A.1 and A.2 in Spl.S.C.No.11 of 2014 on the file of the Special Judge for the trial of offences under SCs/STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad. It is out come of the report of the 2nd respondent-*de facto* complainant in registration of Crime No.72 of 2013, dated 25.03.2013, of Santoshnagar Police Station, for the offence punishable under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC/ST Act'), it is therefrom the police after investigation filed the charge sheet and on committal of P.R.C.No.68 of 2013 by cognizance order and committal proceedings, dated 17.12.2013, by the learned VII Additional Chief Metropolitan Magistrate, Hyderabad, in December 2013, Spl. Sessions Case No.11 of 2014 was allotted.

2. The sum and substance of the contentions in the quash petition are that no case made out against A.1 and A.2 to attract the offence under Section 3(1)(x) of the SC/ST Act. Even on face value of the allegations, there is a delay of 3 days in filing the police report in registration of the crime, out come of after thought, even the distance to the place of occurrence from Santhoshnagar Police Station is about 400 meters. After registration of Crime No.72 of 2013, dated

25.03.2013, the statements of LWs.1 to 5 were recorded on same day (night) without complying the statutory provisions. From the F.I.R. shows the name of the Investigating Officer K.V.M. Prasad only Inspector of Police and not Assistant Commissioner of Police, but for subsequently investigated by Assistant Commissioner of Police, which is after LW.1's statement recorded by the Inspector of Police-K.V.M.Prasad on 25.03.2013 itself immediately after registration of crime and these defects goes to the root of the matter invalidating the entire investigation. As per the Division Bench expression of this Court in **Viswanadhula Chittibabu vs. State of Andhra Pradesh**¹ preceded by earlier Single Judge Bench expression of this Court in **D. Ramalinga Reddy @ D. Babu vs. State of Andhra Pradesh**², the verification of the investigation by the Deputy Superintendent of Police subsequently will not cure the inherent defect as per the expression in **E.Seshaiah vs. The State rep. by its Sub Divisional Police Officer and another**³ and the non-compliance with Rule 7(1) of the Rules 1995 thereby invalidates the investigation and also the cognizance, consequently and thereby sought for quashing the proceedings.

3. No doubt, the track record shows in the middle as the address is insufficient. However, that is the address, as can be seen from the police final report address, of the de facto complainant, to say

¹ 2002 (4) ALT 456

² 1999 (2) ALD (Crl.) 436

³ 2000 (2) ALT (Crl.) 91 (AP)

otherwise sufficient, taken as heard the de facto complainant. Heard learned counsel for the petitioners and learned Public Prosecutor, representing the State.

4. The charge sheet filed by the police after registration of the crime was on 11.10.2013 with the signature of the Assistant Commissioner of Police, Santoshnagar division. The proceedings issued from the Commissioner of Police, Hyderabad City, to Sri S.Sai Krishna, Assistant Commissioner of Police, ACP Santoshnagar, appointing as Investigating Officer in the Crime No.72 of 2013 in P.R.C.No.68 of 2013 was dated 26.03.2013. The copy of which filed by the petitioners shows, it was received by the tappal section of the ACP office on 28.03.2013 only. A perusal of the charge sheet shows total 15 witnesses, of whom two are official witnesses and LWs.1 to 13 are the other witnesses including victim. The crime registered by the Inspector of Police, Santoshnagar. There is no bar for registration of the crime under Rule 7 of the Rules 1995, but for investigation. It is after registration of the crime by the Inspector of Police-LW.14-Sri K.V.M. Prasad, on 25.03.2013, the statement of the *de facto* complainant-S.Sjanti was recorded. However, it contains the signature of the Assistant Commissioner of Police, Santoshnagar Division, on 25.03.2013. He cannot put the signature on 25.03.2013 for not even appointed by then, for his appointment was only on 26.03.2013 and that order of appointment reached their office as per

the tappal section only on 28.03.2013, same is also the position so far as LW.2-S.Sakru, LW.3-M.Gopal, LW.4-B.Arjun and LW.5-Harinath Rao. However, so far as the other witnesses i.e., LWs. 6 to 13 concerned, their statements show recorded by the Assistant Commissioner of Police on 10.04.2013 and subsequently. Thus, so far as the recording of the statements LWs.1 to 5 concerned, it is contrary to the Rule 7 of the Rules 1995 made under Act, for the Inspector of Police cannot conduct investigation, that too the Assistant Commissioner of Police, who was appointed on 26.03.2013 cannot put his signature with anti date on 25.03.2013. Suffice to say, from that part of the investigation is not sustainable. However, that cannot be a sole ground to quash, though it is one of the inherent defects in the investigation to the above extent. Thereby, the Sessions Case number allotted including in taking cognizance under Section 190 by the committal Magistrate read with 193 Cr.P.C. by the learned Sessions Judge, if any, set aside and directed to be return to the police for further investigation by the said Assistant Commissioner of Police to examine and record the statements of LWs.1 to 5 and then file the charge sheet with proper representation, for the committal Magistrate to take cognizance thereafter.

5. Further, the 30 days mandate no way fatal, as the Investigating Officer's latches, as per the settled law, will not invalidate the investigation much less to the sufferance of the victim. After the completion of investigation directed supra with the inherent power of

the Court under Section 482 Cr.P.C., so far as LWs.1 to 5 by the Assistant Commissioner of Police, charge sheet if at all any case made out to be filed, for the committal Magistrate to take fresh cognizance and any of the merits thereafter are left open to impugn by accused.

6. Accordingly, the criminal petition is allowed in part.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

14th December 2018.

L.R. copy to be marked – Yes.

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