

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.12460 of 2018

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“..to issue a Writ or order more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondent No.6 in not recording the sections as per the petitioner's complaint and also not initiating any kind of enquiry even the 6th respondent is not registering the statement of petitioner in Crime No.116 of 2017 on the file of Rayavaram Police Station as illegal, arbitrary and violation of Article 14, 21 of Constitution of India and consequently direct the 3rd respondent to consider the case of the petitioner by conducting detailed enquiry into the matter in Cr.No.116/2017 of 6th respondent police by recording the statement of the petitioner and file Report before the Hon'ble High Court at an earliest and pass such further order or orders as this Hon'ble Court may deem fit and proper in the interest of justice and circumstances of the case.”

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Home (A.P.) appearing for respondents 1 to 6. I have perused the material record.

3. The only grievance of the petitioner in this writ petition is that though the complaint averments disclose the commission of an offence of adultery, the relevant penal provision is not included in the FIR that was issued pursuant

to the registration of the case in Crime No.116 of 2017 on the file of Rayavaram Police Station.

4. Learned counsel for the petitioner would submit that the penal provisions of law, which are relevant and which are attracted to the case stated in the report/complaint of the petitioner, are not mentioned in the FIR that was issued pursuant to the registration of the afore-stated crime and that a plain perusal of the report/complaint discloses the commission of an offence of adultery, but, the penal provision related to the said offence is not mentioned and investigation is being proceeded with and hence, there is a requirement of conducting detailed enquiry into the matter by the police officer concerned in the interests of justice.

5. Learned Government Pleader for Home submits that investigation into the afore-stated crime is taken up; that the Investigating Officer would take an appropriate decision in the matter, on the conclusion of the investigation; that the petitioner, if aggrieved, can avail the remedies, which the law permits at any appropriate stage of the matter; that even after the filing of the final report/charge sheet by the investigating officer on conclusion of the investigation also, the petitioner is entitled to avail the remedies even at that stage; and, hence, the present writ petition is not only premature but also not maintainable.

6. The law is well settled that the police officers ought to register the FIR when the facts brought to their notice *prima facie* show commission of a cognizable offence; and, if the police officials fail to do so, the modalities to be adopted are set out in Section 190 read with 200 of CrPC. Further, if a person has a grievance either with regard to non registration of FIR under Section 154 of CrPC or that even after registering the FIR no proper investigation is being held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned; and on filing of such an application, the learned Magistrate can direct an FIR to be registered, if not already registered, and also can direct a proper investigation to be made in case the grievance is that no proper investigation was being conducted. Further, the Magistrate can also under the same provision monitor the investigation to ensure a proper investigation. [See: Aleque Padamsee v. Union of India¹ & 2. Sakiri Vasu v. State of Uttar Pradesh & Others²].

7. In view of the facts & submissions and the legal position obtaining, the Writ Petition is disposed of directing the sixth respondent to expedite the investigation into the afore-stated crime and file a final report either way by following the due procedure established by law. It is needless to state that the petitioner is always having a liberty to approach the learned

¹ (2007) 6 Supreme Court Cases 171

² (2008) 2 Supreme Court Cases 409

Magistrate for appropriate remedies, which the law permits by following the precedential guidance in the afore-stated decisions of the Supreme Court.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

Date: 12.04.2018
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