

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 9048 of 2011

ORDER:

The petitioner is a ZPTC Member, and the 2nd respondent/defacto-complainant is an MPTC Member. It is alleged that there was a General Body Meeting of Mandal Praja Parishad at MPDO's Office, Kodak village. Whiel the meeting was going on, there was a serious quarrel between the petitioner and 2nd respondent. As per the allegations in the petition, the petitioner, with an intention to dishonour the 2nd respondent, has caught hold of the shirt of 2nd respondent, attracting the offence under Section 355 IPC.

2. Learned counsel for the petitioner submits that the police have taken cognisance of the offence under Section 355 IPC, without obtaining permission from the learned Magistrate. He further submits that an offence under Section 355 IPC is non-cognizable and triable by a Magistrate and, therefore, the police have to take permission from the Magistrate for investigating into the case attracting offence under Section 355 IPC. Learned counsel has also referred to the provision under Section 155(2) of Code of Criminal Procedure (for short, 'Cr.P.C.), which reads that "*no police officer shall investigate a non-cognizable case without order of the Magistrate or commit that case for trial.*" Learned counsel

has placed reliance on the judgment of this Court in **M. Shiva Shanker v. State of Telangana** and submitted that when the offences are non-cognizable, the police, without obtaining permission of the Magistrate, as contemplated under Section 155(2) of Cr.P.C., cannot prosecute the case.

3. Section 355 IPC reads as under:

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

4. Section 155(2) of Cr.P.C. reads as under:

155. Information as to non- cognizable cases and investigation of such cases.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

5. Having regard to the facts of the case, without going into the merits of the case, it is obvious that the police ought to have taken permission from the Magistrate as contemplated under Section 155(2) of Cr.P.C., before taking cognizance and proceeding with investigation of a case attracting offence punishable under Section 355 IPC.

6. In view of the decision in **M. Shiva Shanker**, and the procedure contemplated under Section 155(2) of Cr.P.C., the

proceedings in S.T.C. No.33 of 2008 on the file of Judicial Magistrate of First Class, Kodakandla, are *per se* not in accordance with law and, therefore, are liable to be quashed.

7. **IN THE RESULT**, the petition is allowed, quashing the proceedings in S.T.C.No.33 of 2008 on the file of Judicial Magistrate of First Class, Kodakandla. Miscellaneous petitions, if any pending, shall stand closed.

21.03.2018

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GUDISEVA SHYAM PRASAD, J



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