

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.18867 OF 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India questioning the inaction of the respondent No.3 for not registering the crime against the respondent Nos.4 to 16 for the offence punishable under Section 307 of I.P.C. while registering the crime for the offences punishable under Sections 294, 324, 506 read with 34 of I.P.C. in Crime No.14 of 2018 of Burgampahad Police Station, Bhadradi District.

The petitioner lodged a written report with the police on 27.01.2018 in Telugu and made an allegation that the respondent Nos.4 to 16 made an attempt to kill the father, mother and daughter of the petitioner herein and caused bleeding injuries, but the police did not register any crime for the offence under Section 307 of I.P.C. though there is an allegation.

Learned counsel for the petitioner contended that when a specific allegation is made in the complaint about the commission of serious offence punishable under Section 307 of I.P.C., it is the duty of the police to register the crime and investigate into, but failure to register the crime for the offence punishable under Section 307 of I.P.C. is nothing but disowning the responsibility of police officer in discharging his duty and the said inaction of the Station House Officer is illegal.

Undisputedly, crime is registered for the offence punishable under Sections 294, 324 and 506 read with 34 of I.P.C. despite the allegations made in the complaint that respondent Nos.4 to 16 made an attempt to kill the father, mother and daughter of the petitioner. But the report lodged with the police is only information

to set the criminal law into motion and failure to register a particular offence punishable under particular section would not denude the investigating officer to file the charge sheet. Merely because the crime was not registered for a particular offence, it is difficult to hold that the respondent No.3 disowned his official responsibility to register a crime. If for any reason, the crime was not registered for the offence punishable under Section 307 of I.P.C., the course left open to the petitioner is to file a private complaint before the competent Court under Section 200 of Cr.P.C. and the Magistrate, if satisfied, after recording statement of complainant may take cognizance of the offence or refer the case to the police for taking necessary action. Even otherwise, the investigating officer did not file the charge sheet against respondent Nos.4 to 16 after investigation though material is available, the remedy available to the petitioner/defacto complainant is to file appropriate private complaint or protest petition on receipt of notice issued under Section 173 (2) (ii) of Cr.P.C.

Though police manual has no force of law, it serves as guidance to the police officers and the police personnel in day-to-day performance of their duties as such. Order No. 487-3 contained in Part-I Volume – II of the Andhra Pradesh Police Manual at page No. 494 relating to referred reports reads:

"When a final report is sent to the Magistrate, the SHO shall inform the complainant about the action. The Magistrate also shall send notice to the complainant directing him to show as to why the report should not be accepted. Before acting on the referred report, the Magistrate shall hear both the police and complainant. On the orders of Magistrate, the aggrieved party can to the higher Courts for revision."

This provision is applicable not only to a case where the entire case against all the accused is referred but also to a case where the case relating to some only out of all the accused is referred. After final report is filed by the investigating officer under Section 173 (2) of Cr.P.C., then it is for the Magistrate to apply his/her mind to the facts stated in the final report and to the oral and documentary evidence collected during investigation and come to a conclusion regarding taking cognizance of the offence against any accused under Section 190 (1) (b) of Cr.P.C. Before taking such decision on a final report contained in referred charge sheet insofar as a particular accused is concerned, the Magistrate is expected to give notice to the de facto complainant/ 1st informant in Form No. 52 of the Criminal Rules of Practice and Circular Orders, 1990, on receipt of such notice, the petitioner is entitled to file appropriate petition i.e. protest petition with a request to take cognizance for the offence punishable under Section 307 of I.P.C. But at this stage, the Court cannot issue any direction to the respondent No.3 to register a crime against the respondent Nos.4 to 16 for the offence punishable under Section 307 of I.P.C., leaving it open to the petitioner to avail the alternative remedies available to her.

In the result, the writ petition is disposed of giving liberty to the petitioner to avail the alternative remedies available to her.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

26.06.2018
Ksp