

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7508 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 19-06-2018 in Criminal M.P.No. 1609 of 2018 in C.C.No. 756 of 2017 on the file of the Court of VIII Special Magistrate, Kukatpally at Prashanth Nagar (for short, 'the Court below').

2. Respondent No. 2 herein filed a petition under Sections 254 (1) and (2) of Cr.P.C. seeking leave of the Court below to mark F.I.R. copy in crime No. 295 of 2018 registered for the offences punishable under Sections 403, 406, 420 and 506 read with Section 120-B of IPC as the same could not be filed at the initial point of time. The petitioner herein opposed the petition on the ground that F.I.R. is not a substantive piece of evidence and unless charge sheet is filed, the same cannot be marked. The Court below by the impugned order allowed the petition. Feeling aggrieved, the petitioner filed the present petition.

3. At the hearing, learned counsel for the petitioner has contended that receiving F.I.R. copy for marking the same as an exhibit is illegal for the simple reason that the said crime is under investigation.

4. As seen from the material on record, respondent No. 2 filed petition only under Sections 254 (1) and (2) of Cr.P.C. which deal with the procedure when accused is not convicted. According to Section 254 (1) of Cr.P.C., if the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence and according to sub-

section (2) of Section 254 of Cr.P.C., the Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. Thus, it is clear that when a case is not disposed of under Section 252 or 253 of Cr.P.C., Magistrate is entitled to receive any evidence produced either by accused or by prosecution in support of prosecution case or defence. Hence, filing of copy of F.I.R. is only to support the case of respondent No. 2 and it is not a substantive piece of evidence. Therefore, mere receiving F.I.R. and marking the same by exercising power under Sections 254 (1) and (2) of Cr.P.C. is not an illegality on the face of the record and it is always subject to proof of legality of the said document. However, the petitioner is at liberty to raise any objection regarding nature of evidence and the Court below is directed to decide the validity and probative value of the document at the time of deciding the main case.

5. With the above observation and direction, the criminal petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 19-07-2018.

JSK

M.SATYANARAYANA MURTHY, J.