

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7954 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the Crime/F.I.R.No.51 of 2018 on the file of Gachibowli Police Station, Cyberabad, registered for the offence punishable under Sections 406, 420, 506 read with 34 of I.P.C. and under Section 156 (3) of Cr.P.C.

Respondent No.2 herein filed private complaint before the Magistrate under Section 200 of Cr.P.C. for the offence punishable under Section 406, 420, 506 read with 34 of I.P.C. and by exercising power under Section 156 (3) of Cr.P.C., the same was referred to police for investigation. Thereupon, police registered a case in Crime No.51 of 2018 for the offences punishable under Sections referred above and issued F.I.R.

The present petition is filed to quash the proceedings in Crime No.51 of 2018 on the file of Gachibowli Police Station on various grounds. The main ground urged before this Court is that the respondent No.2 did not comply with the requirement under Section 154 (3) of Cr.P.C. and the very registration of F.I.R. without any material is serious illegality in view of the law laid down by the Apex Court in "**Priyanka Srivastava v. State of Uttar Pradesh**"¹ "**Ramdev Food Products (P) Ltd. v. State of Gujarat**"²

During hearing, learned counsel for the petitioners reiterated the same grounds as urged in the petition and requested this Court to allow the petition.

Learned Public Prosecutor for the State of Telangana contended that the petitioners/accused Nos.4 and 5 filed Criminal

¹ (2015) 6 SCC 287

² (2015) 6 SCC 439

Petition No.3803 of 2018, which was disposed of by this Court on 06.04.2018 and petitioners/accused Nos.1 and 2 filed Criminal Petition No.3911 of 2018, which was disposed of by this Court on 10.04.2018. In the said two petitions, this Court directed the Station House Officer to follow the procedure under Section 41-A of Cr.P.C. and guidelines issued by the Apex Court in **“Arnesh Kumar v. State of Bihar³”**. When the petitioners filed petition and got order, the petitioners cannot renew their request on the same grounds and prayed to dismiss the petition.

The only endeavour made before this Court is that the respondent No.2 did not comply with the requirement under Section 154 (3) of Cr.P.C. and based on such requirement, learned counsel for the petitioners drew the attention of this Court to the last paragraph in page No.6 of private complaint, wherein it is stated that “the complainant filed a complaint before the Police of Gachibowli but the said police did not give acknowledgment for the same and the complainant send the complaint to the police on 09.12.2017 through courier and the police did not claim the parcel and the same is returned to the complainant and the returned postal cover is filed but the police neither issued F.I.R. nor taken any action against the accused and the complainant no other alternate except to approach the Court and filed the complaint.”

Taking advantage of the last paragraph in page No.6 of private complaint, learned counsel for the petitioners contended that without approaching the higher authorities as required under Section 154 (3) of Cr.P.C., the proceedings against the petitioners cannot be continued and liable to be quashed in view of the principles laid down by the Apex Court in **“Priyanka Srivastava v.**

³ (2014) 8 SCC 273

State of Uttar Pradesh” “Ramdev Food Products (P) Ltd. v. State of Gujarat”

No doubt, there is an averment in the last paragraph of page No.6 of private complaint about lodging written report with the police and the failure on the part of the police to take action etc. However, as per Section 154 (3) of Cr.P.C. “any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

But in the present case, all these grounds are raised in the earlier petition Nos.3803 of 2018 and 3911 of 2018 and invited orders of this Court. When the petitioners filed petitions on various grounds and invited orders, and the said orders attained finality, filing of another petition for the same relief is nothing but abuse of process of Court and this Court cannot exercise power under Section 482 of Cr.P.C. as it amounts to review of the judgment which is impermissible as per Section 362 of Cr.P.C.

In “***State of Orissa v. Ram Chander Agarwala and Others***”, the Apex Court held that filing of fresh petition amounts to review of the earlier order in view of bar under Section 362 Cr.P.C. In the facts of the above judgment, the accused was found guilty, convicted and sentenced to undergo imprisonment besides directing

⁴ AIR 1979 SC 87

to pay fine amount, thereafter the accused filed a petition under Section 482 Cr.P.C. to quash the order, wherein the Apex Court held that it amounts to review of the order, which is barred under Section 362 Cr.P.C., which provides that save as otherwise provided by the Code or by any other law no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. If the principle is applied to the present facts of the case, the petitioner is not entitled to seek relief under Section 482 Cr.P.C. having lost his earlier round of litigation in CrI.P.No.8206 of 2014.

Similarly, the Apex Court in “***Hari Singh Mann v. Harbhajan Singh Bajwa and Others***⁵” the Apex Court held that filing of criminal petition under Section 482 Cr.P.C. after dismissal of earlier application would amount to review of the order and the petition under Section 482 Cr.P.C. when finally disposed of by the High Court, no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. This principle is directly applicable to the present facts of the case.

In “***Girraj v. State of N.C.T. of Delhi & Others***⁶” a similar question came up before the Delhi High Court, wherein the Delhi High Court also consistently held that second petition for the same relief under Section 482 Cr.P.C. is not maintainable.

In “***P.Anji Babu v. Government of Andhra Pradesh and Others***⁷” this Court had an occasion to deal with identical issue, where a petition was filed under Section 482 Cr.P.C. to quash the proceedings and invited adverse order to the petitioner therein and

⁵2000(3) ACR 2678 (SC)

⁶ 2012(4) JCC 2292

⁷ 2013(2) ALD (Cri.) 919

later filed a writ petition to quash the proceedings on the same grounds, but this Court took a view that when the petitioner lost his case under Section 482 Cr.P.C., he could not renew his request under Article 226 of the Constitution.

If these principles are applied to the present facts of the case, this Court cannot exercise power under Section 482 Cr.P.C. in the present petition, since it amounts to review of the orders passed by this Court in the earlier petitions.

Hence, I find that this petition is not maintainable. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

30.07.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

