

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.2071 of 2018

ORDER:

This revision case is arising out of the docket order dated 06.07.2017 passed in C.F.No.7008 of 2016 by the Additional Judicial Magistrate of I Class, Kavali.

2. The revision petitioners are A5 to A10 vide FIR No.131 of 2017 of Bitragunta Police Station, SPSR Nellore District.

3. The respondent No.6, who is the *defacto* complainant, has filed a private complaint in the month of December, 2016 before the Additional Judicial Magistrate of First Class, Kavali. On receipt of complaint, the learned Magistrate has made an order, as under:

“Heard perused the record reveals that further investigation is required with regard to documents filed and its authentication. Hence, the complaint is forwarded to SHO of Bitragunta P.S. to investigate and file report on or before 31.08.2017.”

4. Aggrieved by the impugned order, the petitioners have preferred the present revision.

5. Heard Sri S. Ramachandra Rao, learned Senior Counsel appearing on behalf of the petitioners and the learned Public Prosecutor appearing on behalf of the respondents No.1 to 5 and Sri L. Hazarathaiah, learned counsel for respondent No.6.

6. Learned Senior Counsel appearing on behalf of the petitioners mainly submits that the learned Magistrate has passed order without any application of mind, and the order is mechanical, therefore, the order is liable to be set aside. He placed reliance on the judgment of Hon'ble Supreme Court reported in **ANIL KUMAR AND OTHERS Versus M.K.AIYAPPA AND ANOTHER**¹, wherein the Hon'ble Apex Court set aside the orders of the learned Magistrate, and in para-3, it was held as under:

"3. On receipt of the complaint, the Special Judge passed an order on 20.10.2012 which reads as follows:

"On going through the complaint, documents and hearing the complainant, I am of the sincere view that the matter requires to be referred for investigation by the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore Urban, under Section 156(3) Cr.P.C. Accordingly, I answer Point 1 in the affirmative."

And in para-10, it was observed as under:

"We may first examine whether the Magistrate, while exercising his powers under Section 156(3) CrPC, could act in a mechanical or casual manner and go on with the complaint after getting the report."

In para-11, it was held as under:

"The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed Case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid

¹ (2013) 10 Supreme Court Cases 705

sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

7. Learned Senior Counsel further submits that in view of the provision under Section 156(3) Cr.P.C., the learned Magistrate is required to apply his mind while referring the matter for investigation. The application of mind by the learned Magistrate should be reflected in the order. The mere statement that he had gone through the complaint, documents, and heard the complainant is not sufficient compliance of provision under Section 156 Cr.P.C. After going through the complaint, documents and hearing the complainant, the Magistrate has to order investigation under Section 156(3) Cr.P.C., by application of mind to the facts of the case.

8. On the other hand, learned Public Prosecutor fairly submits that the learned Magistrate has to apply his mind while referring the matter for investigation under Section 156(3) Cr.P.C.

9. Therefore, the contention raised by the learned Senior Counsel for the petitioners that the order passed by the learned Magistrate is mechanical, and it is not having any

reasons for referring the matter for investigation, as contemplated under Section 156(3) Cr.P.C. As such, findings of the learned Magistrate in passing the orders are liable to be set aside.

10. Learned Senior Counsel further submits that the offences alleged against the petitioners are civil in nature. Respondent No.6, who is *defacto* complainant, has already filed a suit in O.S.No.190 of 2016 before the I Additional District Judge, Nellore, against all these petitioners and the civil dispute is pending between the parties and the respondent has claimed ownership of the suit schedule property. In the said suit, the petitioners have filed their written statement, and the suit is pending for adjudication. It is submitted that though the civil suit is pending and the parties are litigating for property rights, there is no need for the respondent to file a private complaint, on the same allegations, and therefore, the offences alleged against the petitioners are not made out.

11. In support of the above submission, the learned Senior Counsel has placed reliance on the judgment of the Hon'ble Supreme Court reported in **MOHAMMED IBRAHIM AND OTHERS Versus STATE OF BIHAR AND ANOTHER**², wherein, it was held in para-17, as under:

² (2009) 8 Supreme Court Cases 751

“17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by some else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

12. The learned Senior Counsel further submits that if there is a dispute with regard to the property and a suit is pending between the parties, the *defacto* complainant cannot file a private complaint on the same allegations, and the allegations do not attract the offences alleged against the petitioners.

13. As far as this contention is concerned, it is the Magistrate, to look into these aspects and come to a conclusion, whether any case is made out against the petitioners, and whether there are any facts stated to attract the ingredients of the offences alleged, for referring the matter under Section 156(3) Cr.P.C. for investigation. But, the learned Magistrate has not taken up such exercise, therefore, the order of the learned Magistrate is liable to be set aside.

14. Learned counsel for respondent No.6 has submitted his arguments on merits of the case and requested to dismiss the revision petition. As a matter of fact, the merits cannot be gone into in this revision. Moreover, the order passed by the learned Magistrate is not a speaking order and, therefore, the

matter is remitted to the trial Court for consideration afresh, by passing a speaking order, accordingly.

15. Keeping in view the facts and circumstances of the case, and as per the provision, under Section 156 (3) Cr.P.C, the Criminal Revision Case is allowed, by setting aside the order passed by the learned Magistrate, with a direction to dispose of the matter by following the provision under Section 156(3) Cr.P.C.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 14-11-2018
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