

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No. 20114 OF 2015

ORDER:

The Writ Petitioner lodged a report on 05-07-2012 with III Town (MVP Zone) Police Station, Visakhapatnam City, making serious allegations that one Konduri Mahesh loved her and promised to marry her and enjoyed sexually for one and half years; that in the month of December, 2011, she came to know about the marriage proposals of the said Mahesh; that immediately she approached him and questioned him, for which the latter informed that he will convince his family members and marry her but his marriage was settled and betrothal function was also performed with another woman; that in that connection, the petitioner used to contact the family members of Mahesh including his mother K.Sujatha and uncles P.Srinivas and P.Umamaheswara Rao and that on 26-02-2012 when she questioned the same, his mother and uncles abused her in filthy language by touching her caste name and also threatened her with dire consequences. Basing on the report lodged with the police, a case in crime No. 385 of 2012 was registered initially against Mahesh, his mother and uncles, issued F.I.R. and investigated into. After completion of investigation and obtaining legal opinion from Special Public Prosecutor, Visakhapatnam, the police filed charge sheet against Mahesh only while deleting the names of other accused.

2. The action of Assistant Commissioner of Police, East Sub-Division, Visakhapatnam City-respondent No. 2 in deleting the names of other accused from the charge sheet is assailed in this Writ Petition on the ground that the respondents are not empowered to delete the names of other accused directly without notice as required under Section 173 (2) (ii) of Cr.P.C. enabling the petitioner to file protest petition.

3. At the hearing, while learned counsel for the petitioner has drawn the attention of this Court to Section 173 (2) (ii) of Cr.P.C. which debars the investigating officer to delete any one of the accused from the charge sheet and mandates notice when the charge sheet is filed deleting some of the accused, learned Government Pleader Home (A.P.) supported the action of the respondents.

4. It is an undisputed fact that the petitioner lodged report with respondent No. 2 and the same was registered as a case in crime No. 385 of 2012 of III Town (MVP Zone) Police Station, Visakhapatnam City, against one Konduru Mahesh and four others initially and after completion of investigation, charge sheet was filed against K.Mahesh only for the offences punishable under Sections 417, 420, 376 and 506 of IPC and Section 3 (1) (x) & (xii) of SC ST (POA) Act, 1989, while deleting the names of accused Nos. 2 to 5 as no evidence is available against them to proceed further. If the investigating officer did not find any material against other accused, the procedure to be followed is contemplated under Section 173 (2) (ii) of Cr.P.C. According to Section 173 (2) (ii) of Cr.P.C., the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given to enable the complainant to file protest petition.

5. Learned counsel for the petitioner has drawn the attention of this Court to ***Kotla Hari Chakrapani Reddy Vs. State of Andhra Pradesh***¹, wherein this Court held that in case the investigating officer comes to the conclusion after collection of evidence during investigation that a particular accused person is not involved in commission of the offence and his name was unnecessarily or

¹ 2012 (2) ALD (CrI.) 675 (AP)

wrongly included as an accused person in the case, then while reporting the same to the Magistrate in his final report, the investigating officer is under legal obligation to inform the same to the first informant/de facto complainant about his proposal to refer the case insofar as the said accused is concerned, giving notice of reference of the case insofar as the said accused, before filing final report into Court. In this connection, a reference to the Andhra Pradesh Police Manual also becomes relevant. 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.

5. The other contention raised before this Court is that no notice was served as required under Section 173 (2) (ii) of Cr.P.C. to enable the petitioner to file protest petition for not filing charge sheet against other accused. On a co-joint reading of the law declared by this Court and the mandate under Section 172 (2) (ii) of Cr.P.C., the whole idea of the legislature is to prevent police from acting according to their whim and fancy while filing final report. Sending report to the first informant is only to file protest petition questioning such illegal exercise of power by investigating agency. Apart from violating the mandatory requirement, the investigating officer himself deleted the names of other accused instead of placing entire record before Magistrate for taking cognizance of offence against one or all of the accused. As the petitioner is deprived of her right to file protest petition to redress her grievance, the proceedings before the Court below are illegal. However, the petitioner may approach the Court below to file protest petition subject to permissibility.

6. In view of my foregoing discussion, respondent No. 2 is directed to file charge sheet against all the accused along with evidence collected during investigation and on such filing, the Court below is directed to apply its mind and take cognizance of the offences against all or any of the accused, subject to availability of evidence to proceed further, in accordance with law. However, I find no ground to order re-investigation while leaving it open to exercise power under Section 173 (8) of Cr.P.C.

7. The criminal petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 14-06-2018.

JSK

M.SATYANARAYANA MURTHY, J.