

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.17567 of 2019

ORDER:

Being aggrieved by the inaction of the fifth respondent in taking action against the sixth respondent pursuant to the complaint, dated 17.06.2019, made by the petitioner, the present writ petition is filed.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Home.

3. A perusal of the material on record shows that the petitioner was arrayed as accused No.2 in Crime No.576 of 2018 registered on 04.11.2018, on the file of Raidurgam Police Station, Cyberabad, for the offences punishable under Sections 448, 427 and 504 read with Section 34 IPC, pursuant to the complaint of the sixth respondent. However, after conducting investigation into the matter, the fifth respondent, while filing the charge sheet before the learned XXIII Metropolitan Magistrate, Rajendranagar, excluded the name of the petitioner by observing as under:

‘..As per the statements of witnesses and on my personal enquires, the accused A2 and A3 involvements are not established in this case. Hence not charged against the accused persons A2 and A3.’

4. It is on the basis of the said observation made by the fifth respondent in the charge sheet filed before the learned XXIII Metropolitan Magistrate, the petitioner has lodged a complaint before the fifth respondent to register a case against the sixth respondent under Sections 182 and 211 IPC, alleging that on account of the malicious complaint

made by the sixth respondent, the image of the petitioner in the society has been damaged.

5. Learned counsel for the petitioner submits that the complaint made by the petitioner to the fifth respondent authority clearly establishes that the sixth respondent knowingly made a false disclosure and therefore, his complaint may be registered and investigated into. To support his contention, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in BASIR-UL-HUQ v. STATE OF WEST BENGAL¹.

6. On the other hand, learned Assistant Government Pleader for Home submits that the fifth respondent, while filing the charge sheet, has observed that after personal enquiries and recording the statements of the witnesses, the involvement of accused No.2 in the case was not established and accordingly, excluded the name of accused No.2, the petitioner herein. He therefore submits that it cannot be said that the sixth respondent made a false complaint before the authority concerned, warranting registering of a case against her under Sections 182 and 211 IPC, as alleged by the petitioner. In support of the said submission, learned Assistant Government for Home Pleader placed reliance on the judgment of the Hon'ble Supreme Court in SANTOSH BAKSHI v. STATE OF PUNJAB²,

7. In BASIR-UL-HUQ's case (1 supra), the Hon'ble Supreme Court dealt with the issue of malicious prosecution which would entail the accused to initiate appropriate proceedings for the offence under Section 500 IPC and not for initiating proceedings under Sections 182 and 211 IPC

¹ 1953 AIR 293

² (2014) 13 SCC 25

and therefore, the said case has no application to the facts of the case on hand.

8. In SANTOSH BAKSHI (2 supra), the Hon'ble Supreme Court observed that to make out a case under Section 182 IPC, the following ingredients are to be proved:

- (i) An information was given by a person to a public servant.
- (ii) The information was given by a person who knows or believes such statement to be false.
- (iii) Such information was given with an intention to cause or knowing it to be likely to cause (a) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person.'

9. Admittedly, to register a case under Sections 182 and 211 IPC, the petitioner has to satisfy the ingredients of the said Sections.

10. In the facts of the present case, the fifth respondent did not observe that the sixth respondent has given information which she was knowing and believing to be false. In the charge sheet, it has not even been reported that the sixth respondent was knowing that the information given is false but still gave the information to harass the petitioner. On the other hand, the fifth respondent observed that after his personal enquiries and on examination of witnesses, the involvement of accused No.2, the petitioner herein, in the case was not established, and therefore, the name of the petitioner was excluded and this does not mean that the sixth respondent has given a false complaint. The decision in SANTOSH BAKSHI's case (2 supra) squarely applies to the facts of the present case. Further, the said finding by the fifth respondent is not final, as it is for the Court into which the final report/charge sheet is filed and also it is

open for the *de facto* complainant to raise a protest to the final report filed.

11. Since the petitioner has failed to make out a case under Sections 182 and 211 IPC, as aforestated, this Court is of the view that no direction as sought by the petitioner can be given in the writ petition and therefore, the writ petition is liable to be dismissed.

12. The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date:27.11.2019

GJ

JUSTICE T.VINOD KUMAR

