

THE HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.19172 of 2014

ORDER:

Heard learned counsel for the petitioner as well as learned Government Pleader for Home appearing for the respondents.

2. The prayer in the writ petition is as follows:

“..... to issue order or orders more particularly one in the nature of writ of mandamus declare the inaction of the Respondent No.3 herein registering the complaint dated 06.06.2014 which attracts cognizable offence and in failing to conduct effective investigation in Crime No.56/2014 of P.S. Pochampally as illegal, arbitrary against the law and gross a misuse of public office and violation of Article 21 of constitution of India.”

3. Learned counsel appearing for the petitioner submits that the respondent police in collusion with the owner of the lorry involved in the accident implicated the owner of the auto in order to have contributory negligence on the part of both the vehicles. The basic grievance of the petitioner in the writ petition is inaction of respondent No.3 in registering the complaint dated 06.06.2014 and failure to conduct effective investigation in crime No.56 of 2014 of Pochampally Police Station as arbitrary and illegal.

4. Respondent No.2 filed counter affidavit stating that on the complaint lodged by the petitioner a case in crime No.56 of 2014 for the offence under Section 304-A, 337 IPC was registered on 27.04.2014 against one Eswara Yellaiah, driver of the lorry bearing No.AP-24-V-7803 and J.Lingaswamy, driver of the auto bearing No.AP-24-W-8536 and investigation was taken up. During the course of investigation, the complainant and 5 other witnesses were examined and their statements were recorded in the presence

of 2 panchas and seized the crime lorry and the auto. The inquest was held over the corpse of the deceased in the presence of same panchas. On 14.05.2014, A.1 and A.2 have surrendered before the investigating agency and they were sent to judicial custody. It is also further mentioned that the investigation revealed that both the accused committed the offence. Therefore, after completion of investigation a charge sheet was also filed on 31.05.2014 before the learned Additional Judicial First Class Magistrate, Bhongir. It is also further stated in the counter affidavit that after filing of the charge sheet, the petitioner herein, who is the mother of the deceased submitted a representation dated 06.06.2014 to the Superintendent of Police, Nalgonda District, stating that the respondent police in collusion with the owner of the lorry screened the driver who actually caused the accident because the driver has no license and owner did not renew the insurance created a false entry and contention in the inquest that the auto driver was driving rashly. All this was done by SHO, Pochampally Police Station with active conspiracy with the lorry owner. Hence she requested to take necessary action. The Superintendent of Police endorsed and forwarded the said complaint to the SI of Police, Pochampally, for necessary action vide C.No.565/CCC-NLG/14 dated 06.06.2014. It is further stated in the counter affidavit that the respondent police conducted the investigation in an impartial and sincere manner and filed the charge sheet against both the accused. However, the contention of the petitioner that the respondent police in collusion with the lorry owner screened the driver who actually caused the accident is incorrect, baseless and far from the truth.

5. Though counter affidavit has been filed by respondent No.2 giving clear particulars, no reply affidavit is filed rebutting the facts and contentions raised by the respondent No.2 in the counter affidavit. However, the contentions raised by the learned counsel for the petitioner that the respondent police in collusion with the owner of the lorry, screened the driver of the lorry and involved the auto only for the purpose of attributing contributory negligence may not stand for legal scrutiny, more particularly, in a writ petition filed under Article 226 of the Constitution of India. Further, whether the respondent police colluded with the owner of the lorry and etc., are the disputed questions of fact which cannot be gone into in a writ petition filed under Article 226 of the Constitution of India. Since it is stated in the counter affidavit that after completion of investigation a charge sheet was filed, if the petitioner is not satisfied and having any objections on the charge sheet, the remedy available to the petitioner is to file a protest petition as per law before the concerned Magistrate. Therefore, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

6. Accordingly, the Writ Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE P. KESHAVA RAO

Date: 07.11.2019
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