

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.32322 of 2022

ORDER:

This writ petition is filed seeking the following relief:

“ ... to issue any order or direction writ or writs more particularly on in the nature of WRIT OF MANDAMUS by declaring the action of the Respondent No. 3 in submitting the report u/s. 107 CRPC to the Respondent NO. 4, to take action against petitioner and other petitioners and inturn the action of the Respondent NO. 4 issuing summons to petitioner and other petitioners to appear before Respondent NO. 4 on 05.8.2022 even during the pendency of suit vide O.S.No. 90 of 2020 on the file of the Junior Civil Judge Jogipet is illegal, arbitrary and violation of principles of natural justice and consequently to set aside the Proceedings initiated u/s. 107 of CRPC, initiated by the Respondent NO. 4, on the report submitted by the Respondent No. 3 dt. 03.8.2022, and pass such other order or orders as this Hon'ble Court, may deem fit and proper in the circumstances of the case.”

2. Sri D.Y.N.L.N. Charyulu, learned counsel for the petitioners, submits that the petitioners filed this writ petition assailing the report submitted by the respondent police under Section 107 Cr.P.C. and consequently to set aside the said report. He submits that there are certain civil disputes pending between the petitioners and the unofficial respondents and basing on the complaint given by the unofficial respondents, the respondent police are registering cases.

Then the petitioner has given a complaint and the same was acknowledged, but no case is registered. According to the petitioners, submitting a report to the Executive Magistrate and in turn the Executive Magistrate issuing notice of summons to the petitioners under Section 113 Cr.P.C. is bad. He further submits that when the civil disputes are pending between the parties, the respondent police cannot submit a report and basing on such report, the Executive Magistrate cannot issue summons to the petitioners.

3. Sri A. Manoj Kumar, learned Assistant Government Pleader for Home, on written instructions, submits that three crimes were registered against the petitioners and in two crimes, the respondent police have already filed charge sheets. He submits that there is absolutely no illegality in submitting report to the Executive Magistrate and in turn the Executive Magistrate issued the summons to the petitioners. The consequential prayer as sought by the petitioners in the writ petition is to set aside the proceedings initiated under Section 107 Cr.P.C. The Executive Magistrate while discharging the judicial functions as defined under the Code of

Criminal Procedure has issued summons to the petitioners. The petitioners have filed this Writ Petition seeking a writ of mandamus and it will not lie against the judicial authority or against the Court and on that ground alone, the writ petition filed by the petitioners has to be dismissed. Further, when summons are issued to the petitioners, it is not their case that such order is passed without any jurisdiction.

4. According to the petitioners, as there are civil disputes between the parties and the respondent police have not registered the complaints given by the petitioners and having registered the complaint given by the unofficial respondents, ought not to have submitted a report under Section 107 Cr.P.C. All these issues cannot be decided by this Court while exercising the jurisdiction under Article 226 of the Constitution of India. Further, when the summons are issued, the petitioners have to pursue the matter before the learned Magistrate and if they are aggrieved any orders passed thereon, they have an alternative remedy and no writ of mandamus lies.

5. Accordingly, the Writ Petition is disposed of giving liberty to the petitioners to pursue the alternatives remedies available to them, in

accordance with law. No order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

August 18, 2022

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