

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.11898 OF 2022

Between:

1. Matta Vijaya Narasimha Rao S/o M Vishnu Mohan Rao
Aged 36 years, Occ: Private Service
R/o Pendurthi, Visakhapatnam

2. M Thanuja Devi W/o Matta Vijaya Narasimha Rao
Aged 35 years, Occ: Private Service
R/o Pendurthi, Visakhapatnam

3. Vinukonda Naga Durgaprasad S/o Late Sambasiva Rao
Aged 33 years, Occ: Business
R/o Medapedu (v), Yelamanchali (M)
West Godavari District

4. P Uma Maheshwara Rao S/o P Balaji
Aged 34 years, Occ Business
R/o Velpuri (v) Tanuku Mandal,
West Godavari District

...Petitioners/Accused Nos.1 to 4

AND

1. The State of Telangana
Rep by Public Prosecutor
High Court for State of Telangana, Hyderabad.

2. C Anand S/o C Venkateshwalu
Aged 38 years, R/o.H.No.84550/10/1,
Natraj Nagar, Erragadda, Sanathnagar, Hyderabad

...Respondents/de-facto complainant

DATE OF ORDER PRONOUNCED: 03.01.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

***THE HON'BLE SRI JUSTICE K.SURENDER**

+ CRLP. No. 11898 of 2022

% Dated 03.01.2023

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! Counsel for the Petitioners: Mr.N MANOHAR
^ Counsel for the Respondent: Additional Public Prosecutor-
for Respondent No.1.

>HEAD NOTE:
? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11898 OF 2022

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners-Accused Nos.1 to 4 to set aside the proceedings against them in FIR No.1085 of 2022 pending on the file of Station House Officer, Madhapur Police Station, Cyberabad. The offences alleged against them are under Sections 420, 406, 468, 471, 506 read with 34 of IPC.

2. Heard both sides.

3. The petitioners/Accused Nos.1 to 4 are aggrieved by the docket order dated 13.10.2022 passed by the learned X Additional Metropolitan Magistrate, Ranga Reddy District at Kukatpally, directing the complaint to be referred to Station House Officer, Madhapur, for the purpose of investigation. The docket order dated 13.10.2022 reads as follows:

"Petitioner present and informed about contents of the complaint. Court perused the complaint and satisfied that there is a prima facie case, it was found that complainant gave complaint to SHO concerned and also his higher officials, it was informed by the complainant that no action was taken by the police on his complaint. Hence, the complainant was referred to SHO, PS Madhapur, for investigation under Section 156(3) of Cr.P.C., for filing report call on."

4. Learned counsel for the petitioners submits that no reasons are given in the said order. Subjective satisfaction of the learned Magistrate has to be reflected in the docket order and then referred to the Police for the purpose of investigation without reasons the order is bad in law. He relied on the judgment of Hon'ble Supreme Court in ***Krishna Lal Chawla and others vs. State of Uttar Pradesh and another***¹. In the said case, the Hon'ble Supreme Court interfered with the orders of the learned Magistrate in issuing summons in the case finding that issuance of summons is serious in nature and the powers bestowed upon the Magistrate for issuing such process and summons shall be exercised with caution. The other judgment relied upon is the case of ***S.R.Sukumar vs. S.Sunaad Raghuram***². In the said judgment the Hon'ble Supreme Court was dealing with the non application of mind by the learned magistrate while taking cognizance of criminal offences under Section 200 of Cr.P.C. Both the judgments deal with the powers of the Magistrate in taking cognizance of offences and issuance of summons to the accused for facing trial. In the present case a private complaint was filed and having gone through the contents of the complaint, the learned Magistrate being satisfied that *prima facie* case was made out has referred complaint to the Police under Section 156(3) of

¹ 2021(2) ALD (Cri.) 184 (SC)

² 2015(2)ALD(Cri.) 798 (SC)

Cr.P.C. There is a differences between taking cognizance by the Court under Section 200 of Cr.P.C and referring a complaint for the purpose of investigation under Section 156(3) of Cr.P.C. In the former, the Court has to be cautions while taking cognizance since the accused has to undergone criminal trial. For the said reason, the Supreme Court has found that while taking cognizance, the Court should be cautious and unless the facts of the case make out criminal offences *prima facie* to the satisfaction of the Magistrate, summons should not be issued. Further in the later situation, when a Magistrate is dealing with a complaint before forwarding to the Police for the purpose of investigation under Section 156(3) of Cr.P.C., no such satisfaction is required to be recorded. The learned Magistrate while proceeding in accordance with the Section 156(3) of Cr.P.C., acts as a postman to send the complaint for the purpose of investigation and is not required to record reasons in a detailed manner.

5. As seen from the complaint, having been satisfied with *prima facie* case being made out, such reference was made. I do not find any illegallity or irregularity in the learned Magistrate exercising his powers to refer the complaint under Section 156 of Cr.P.C. The offences alleged against the petitioner are punishable less than seven (07) years.

6. In view of the aforesaid discussion, this Criminal Petition is disposed off directing the Investigating Officer in FIR No.1085 of 2022 pending on the file of Station House Officer, Madhapur Police Station, Cyberabad, to strictly follow the procedure laid down under Section 41-A of Cr.P.C. and also the guidelines issued by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar***³. The petitioners shall co-operate with the Investigating Officer by furnishing information as sought by him in concluding the investigation within the prescribed limits.

7. Accordingly, the Criminal Petition is disposed of.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 03.01.2023
gms

³ (2014) 8 SCC 273

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11898 OF 2022

03.01.2023

Gms