

IN THE HIGH COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD

Present
The Hon'ble Mr. Justice
G.Krishna Mohan Reddy,J.

Crl.P.No.8189 of 2009 - Decided on 13-08-2012

Md.Mazhar Pasha

---Petitioner

Vs.

State of Andhra Pradesh & another

---Respondents

CRIMINAL PROCEDURE CODE 1973 - Section 156(3), 200 and 202 - Investigation - Forwarding of private complaint to police for, on request made by defacto-complainant - Improper - Magistrate to exercise discretion given under S.202 independently uninfluenced by any plea - Making request to Magistrate to forward complaint to Police under Sec.156(3), is against spirit of the provision - No cognizance of such complaints should be taken - On the other hand such complaint should be returned when filed - All Judicial Magistrates of First Class should adhere to this proposition.

Discretion is given under Section 202 Cr.P.C to the Judicial Magistrate of First Class either to conduct enquiry on a private complaint filed or send the private complaint to the Police for necessary investigation and report when he finds or satisfies that it is necessary to do so. When such discretion is given under law the learned Magistrate has to exercise it independently uninfluenced by any plea. Hence, it is most improper to request the learned Magistrate to forward the complaint to the Police under Section 156(3) of Cr.P.C. If the learned Magistrate just forwarded the complaint on the request made, it amounts to that he had not acted independently and not exercised the discretion properly. Such request is against the spirit of the provisions, which should not be allowed. Thereby, no cognizance of such complaints should be taken, on the other hand it should be returned when it is filed. All the Judicial Magistrates of First Class should clearly adhere to this proposition. (Para 9)

Penal Code 1860 - Section 415 and 420 - Cheating - Prosecution for offence of - Quashing of, Scope - Allegation that accused approached defacto-complainant and got a loan by virtue of his acquaintance with him promising to repay loan amount within one month - That defacto-complaint lent the amount believing accused but accused failed to keep up his word and retained the amount with malafide intention once for all - Ingredients of Ss.415 and 420 prima facie made out - At this stage, High Court cannot go into merits of case and come to a conclusion that allegations made against accused are false - Criminal petition dismissed. (Criminal Procedure Code 1973, Section 482) (Para 11, 12)

Reported in 2012(2) ALD (Crl.) P-925 (A.P)

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