

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY****Writ Petition No.7176 of 2021****ORDER:**

The Writ Petition has been filed seeking writ of mandamus declaring the permission granted by the 4<sup>th</sup> respondent Superintendent of Police, West Godavari District, to the investigating officer to refer the case in Crime No.292 of 2020 of Tanuku Rural Police Station, West Godavari District, as false, illegal and arbitrary, and consequently, sought to set aside the proceedings of the 4<sup>th</sup> respondent and to direct the respondents to file final report in the Court for taking cognizance of the offence.

2. Heard learned counsel for the petitioner and the learned Assistant Government Pleader for Home appearing for respondents 1 to 5.

3. Factual matrix of the writ petition may be stated as follows:

The petitioner is the *de facto* complainant in Crime No.292 of 2020 of Tanuku Rural Police Station, West Godavari District. He has lodged a report with the police stating that the accused, who are named by him in the report, abused him and insulted him in the name of his caste. Therefore, a case in the above Crime for the offence under Section 3(1)(r) & 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was registered against the accused therein. After completion of the investigation, eventually, the

Investigating Officer referred the case as false. He sought permission of his superior officer, who is the Superintendent of Police, West Godavari District, the 4<sup>th</sup> respondent herein, to refer the case as false. It appears that the 4<sup>th</sup> respondent in his proceedings in C.No.95/C2/Auth/2020, dated 30.11.2020, accorded permission to refer the case as false.

4. Therefore, questioning the said proceedings of the 4<sup>th</sup> respondent in according permission to the Investigating Officer to refer the case as false, the petitioner is before this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking the aforesaid reliefs.

5. It is the case of the petitioner that the petitioner belongs to Scheduled Caste and the police have erroneously held that the caste certificate produced by the petitioner is invalid and that the police are not competent to hold that the caste certificate issued by the competent authority declaring the petitioner as a person belonging to the Scheduled Caste, as invalid. Therefore, it is his case that the very proceedings referring the case as false is erroneous.

6. In this regard, it is to be noticed that, as per the settled law, when a criminal case has been referred by the police after investigation, either as false or on any other ground, the learned Magistrate/Special Judge as the case may be has to either accept the said final report or he can reject the same if it is not

in accordance with law. Before passing any such order either accepting it or rejecting the same, the Special Court is obliged under law to issue notice to the *de facto* complainant, who is the petitioner herein, to enable him to file a protest petition opposing the final report that was filed by the Investigating Officer. Therefore, on receipt of any such notice from the Special Court, the petitioner has got an ample opportunity to file his protest petition with the above grounds that the police are not competent to declare the caste certificate as invalid and that referring the case as false on that ground, as erroneous. Instead of approaching the Special Court by way of filing the protest petition opposing the final report, and without exhausting the said remedy, which is available to the petitioner as per law, he has approached this Court under Article 226 of the Constitution of India.

7. It is well settled law that when an efficacious remedy is available to the aggrieved person, he has to exhaust the said remedy and he cannot directly approach the Writ Court questioning the impugned proceedings. No explanation is offered for directly approaching this Court without approaching the Special Court and exhausting the said remedy.

8. Therefore, in the said facts and circumstances of the case, and for the reasons discussed supra, the Writ Petition is disposed of with a direction to the petitioner to approach the Special Court and file a protest petition opposing the final report. In the event of filing any such protest petition, the

Special Court has to consider the same and conduct an enquiry on it and pass appropriate orders according to law on the said protest petition. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE CHEEKATI MANAVENDRANATH ROY**

Date:22.06.2021.

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