

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**WRIT PETITION NO.11144 of 2019****ORDER:**

This is a Writ of Mandamus filed by the Petitioner seeking for a direction to respondent No.4 to register the FIR in pursuance of the Complaint, Dt. 12.02.2019 of the Petitioner.

02. Heard learned counsel for the Petitioner and the learned Government Pleader for Home. In spite of service of Notice on respondent No.5, none appeared on his behalf.

03. The Petitioner is the Secretary of Carriage and Wagons of East Coast Railway Shramik Congress Union. The East Coast Railway Shramik Congress is a registered trade union vide Registered Number 758 CTC, dt. 31.10.2002, having Head Office at Cuttack. It has got 40,000 employees of Railway Department as its ordinary members. The Union runs under the supervision of Railways and there is deep and pervasive control by the Railways. There are 20 branches in Visakhapatnam Division. The Branch Secretary used to collect membership from the members in the branch and remit Rs.1,000/- for membership book to the General

Secretary and remaining balance to be kept with the branch as per the Rules and Bye-Laws of the Union.

04. In the year, 2016, the General Secretary of the Union wrote a Letter to the Administration to implement the recovery of subscription/membership from the salaries of the members/staff and the same has been implemented vide Joint Procedural Policy by collecting Rs.30/- per month. The Administration directly deposits the amounts in the Central Account and in turn, the General Secretary has to disburse the same to Branch Quota of 50% directly to the branches accounts. In the year 2017, the total members of the Union were 28000. After 2017 onwards, the membership fee of Rs.360/- is being deducted from the salary concerned Member (Monthly Rs.30/-) and the entire amounts are deposited in Zonal Account. It is the duty of the General Secretary to retain Central/Zonal amounts with Central Account and remit Branch Quota amounts to concerned branches for smooth running of the Union. The General Secretary has not remitted branch quota amounts and has blocked day to day affairs of the Union and acted against the Rule 18 (iv) of Bye-laws of the union. The total subscription

amount deposited in the Central Quota is nearly Rs.1 Crore, but no amount is remitted to the branches accounts or divisional accounts. Likewise, in the years 2016,2017 and 2018, the subscription amounts were recovered from the salaries of the staff and they are being directly deposited in the central quota by the General Secretary. As per the Policy of Union, the General Secretary ought to have remitted divisional and branch quota amount by allowing divisional and branch office bearers to open accounts and utilize the said amount for branch and divisional purpose.

05. Respondent No.5 worked as General Secretary of the Central Executive Committee of the East Coast Railway Shramik Congress Union till 18.07.2018. Even after expiry of his term, respondent No.5 used to represent before the bank authorities and dealt with the back account of the East Coast Railway Shramik Congress Union. Respondent No.5 has to retain 50% of the amount in zonal account and the remaining amount has to return to the branches. Respondent No.5 with a dishonest intention of cheating the members of the Union, posted himself as General Secretary before the banking authorities and created cheques and slips in his official

capacity and used them as genuine and withdrawn the branches quota amounts in lakhs and thereby cheated all the members of the Union and utilized the same for his personal gain and caused wrongful loss to the members of the Union. On noticing the same, a complaint has been given to Respondent No.3, requesting to take appropriate action against Respondent No.5. As no action has been taken against him, the petitioner approached Respondent No.4 and respondent No.4 having received the complaint in the month of February, 2019 did not take any action.

06. In the light of the aforesaid averments in the affidavit, the learned counsel submits that in the light of the **Lalita Kumari vs Govt.Of U.P.& Ors¹**, respondent No.4 ought to have registered the complaint as there is a cognizable offence in the light of the facts referred above. As respondent No.4 has not registered the complaint, he is seeking for a direction to respondents to register the complaint as FIR.

07. Learned Government Pleader for Home while placing reliance on the instructions from Respondent No.4, submits that the petitioner has approached the Police Station of Air

¹ 2014 (2) SCC 1

Port Police Station, Visakhapatnam District and lodged a complaint on 12.02.2019, requesting to initiate action against Mr. Ramesh Chandra Sahoo/respondent No.5 herein, who was as General Secretary of East Coast Railway Shramik Congress Union, alleging that he has misappropriated the Union funds of their branch and caused wrongly loss to the members of the Union. Upon receipt of the said complaint, an entry was made by the Station House Officer in the General Diary on the same day itself and after going into the contents in the complaint appeared to be non-cognizable in nature, the S.H.O., Air Port, has informed the same to the petitioner by way of issuing Receipt on 07.03.2019. As the contents of the complaint of the petitioner is not in cognizable nature, no action has been taken on the complaint of the petitioner so far.

08. On consideration of the submissions of the learned counsel for the petitioner and the learned Government Pleader, it is obvious that the petitioner has lodged a complaint on 12.02.2019, requesting to initiate action against Respondent No.5 for misappropriation of the Union Funds of their branch and caused wrongful loss to the members of the

said Union. It is pertinent to note that the Station House Officer has made a G.D. Entry on the same day and intimated the same to the petitioner by way of issuing a Receipt Dt. 07.03.2019. In the light of the Judgment in **Lalita Kumari's** case, if there is cognizable offence, the S.H.O., has to register the complaint and investigate the same. Since the Station House Officer felt that the offences are non-cognizable in nature, no action has been taken so far.

09. In view of the facts and circumstances of the case, Respondent No.4/the Station House Officer, Air Port Police Station, Visakhapatnam District, is directed to take further action in the matter expeditiously as per the procedure established by law. It is also made clear that the petitioner has an alternative remedy of preferring a Private Complaint before the concerned Magistrate, if he so wishes, to prosecute Respondent No.5. Since there is no representation from Respondent No.5 and as the complaint has already been received by the S.H.O., and G.D. Entry has been made and since it was found that the offence is a non-cognizable offence, the Station House Officer is hereby directed to follow the procedure contemplated under law.

10. With these observations, the Writ Petition is disposed of

As a sequel, miscellaneous petitions, if any, shall stand closed.

Dt. 03—09--2019

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G. SHYAM PRASAD, J

HONOURABLE SRI JUSTICE G. SHYAM PRASAD

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