

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.10707 of 2015

ORDER :

This criminal petition is filed by the petitioners/A.1 under Section 482 Cr.P.C seeking to quash the proceedings in S.C.No.179 of 2014 on the file of the Additional District and Sessions Judge, Ramachandrapuram of East Godavari District, for the offences punishable under Sections 147, 148, 332, 353, 427, 120(B) and 506 read with 149 IPC.

2. Heard the learned counsel for the petitioner as well as the 1st respondent-State represented by the Public Prosecutor before admission and before notice to the 2nd respondent and perused the material on record.

3. The police after registration of crime investigated the case and cited as many as thirty witnesses including LW.28-Doctor, who treated the injured constable-LW.8 and issued wound certificate as out-patient stating that the injury sustained is simple in nature, it is the crux in registering the crime for the offence under Section 307 IPC on the report of the V.R.O.-LW.1. The final report filed by the police and cognizance taken by the learned Magistrate under Section 190 read with 209 Cr.P.C. in committing the case to the Court of Sessions and learned Sessions Judge in turn taken cognizance for the offences supra under Section 193 Cr.P.C.

4. The case is coming up for hearing before charges as contemplated by Sections 226 to 228 Cr.P.C.

5. A perusal of the material on record clearly shows there is intention for any of the accused persons in their attempt to prevent the acts in pursuance of a public meeting of grievance by the proposed construction of coal based thermal project in the area in their entity to say that it ruins their health and atmosphere and also the agricultural fields and their breadwinning.

6. A perusal of the material shows that there is no intention to any

of the accused to attack LW.8-constable, who is the injured. Hence, the cognizance taken by the learned Magistrate under Section 190 Cr.P.C. read with 209 Cr.P.C. in committing the case and in turn by the learned Sessions Judge under Section 193 Cr.P.C. among the offences for the offence under Section 307 IPC is per se unsustainable. Further, depending on the weapon used by the accused i.e., stone or boulder or dangerous weapon for causing injuries to the injured, the trial Court can consider framing of charge either under Section 323 or 324 IPC.

7. Having regard to the above, the Criminal Petition is disposed of holding that there are no ingredients to attract the offence against the petitioner/A.1 for the offence under Section 307 IPC in directing the trial Court to consider framing of charge either under Section 323 or 324 IPC, but not under Section 307 IPC, apart from other offences on own merits as it no way effects the right to seek discharge for other offences there from to consider only from the prosecution material on own merits as laid down by the Apex Court in State of Orissa v. Debendranath Padhi^[1] and pass appropriate orders. Further remedies, if any, are left open to the petitioner.

8. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

12th October, 2015.
vvr

^[1] (2005) 1 SCC 568