

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.9402 of 2015

ORDER :

Heard the learned counsel for the petitioner and also the Public Prosecutor representing the respondents and perused the material on record.

2. This criminal petition is filed under Section 482 Cr.P.C. by PW.8- Investigating Officer of S.C.No.67 of 2013, the same was ended in acquittal by judgment dated 10.11.2014 of the IV Additional Assistant Sessions Judge, Guntur, for most of the witnesses not supported the prosecution. It is while acquitting, the learned Judge in Para 9.11 of the judgment (Page 8 of the printed judgment) made certain observations, which reads as follows:

“PW.8 Inspector of police who choose to investigate into the offence of Sec.506 Indian Penal Code by going to the alleged place of offence which turns out the scene of offence for the offence u/sec.307 Indian Penal Code, did not choose to register separate FIR even though he came to know about the commission of offence u/sec.307 Indian Penal Code which is different offence un connected with the offence which he is investigating and more serious offence. He even did not choose to intimate the court about the commission of offence u/sec.307 IPC till producing the accused before court i.e., 20 days after the alleged addition of offence u/sec.307 Indian Penal Code. All those circumstances including

the unnatural conduct of P.W.8 probablize the defence of the accused that only to force him to transfer property, a report was obtained from P.W.5 for the offence u/sec.506 Indian Penal Code and took the accused to police station and kept him there for 20 days and as he refused to transfer property as demanded, he was produced before the court by adding Sec.307 Indian Penal Code so as to prevent him from getting bail immediately. Hence, in those circumstances, I have no hesitation to conclude that the prosecution has miserably failed to prove the guilt of the accused for any of the charges u/ss.307 or 506(ii) Indian Penal Code. Accordingly, this point is answered against the prosecution.”

3. This criminal petition is filed seeking to expunge the aforesaid adverse remarks. The Investigating Officer in fact has no remedy of filing State appeal as adverse remarks remain on record even though the case against the accused were ended in acquittal.

4. Now the point for consideration is whether the remarks made by the learned trial Judge are sustainable on its face value despite the constitutional bench expressions of a judicial restraint required in making the remarks against the Investigating Officers?

5. In fact, the crime registered is Part-II of Section 506 IPC. The same is non-cognizable practically for the police have no rights to register the crime as if under Section 154 Cr.P.C. for the bar under Section 155 Cr.P.C., more

particularly, from clause (2) of Section 155 Cr.P.C. without compliance of the same. Leave it as it is, it is in the course of investigation, Investigating Officer came to know about the involvement of the accused not for the offence under Section 506 IPC, but under Section 307 IPC. The remark made by the trial Judge is for not choosing to give another F.I.R. and not choosing to give immediately after knowing, in the course of investigation, about the commission of the crime for the offence under Section 307 IPC, but for waiting about 20 days, including in filing a memo, only at the time of production of the accused with remand report for the grave offence under Section 307 IPC.

6. It appears accused was not originally arrested and enlarged on bail for the offence under Section 506 IPC as had it been, but for alteration and issuing of express altered memo, even as per police standing orders, no fresh F.I.R. is required and no fresh bail is required even original offence is a bailable one and altered one is a non-bailable one, as bail once granted enures till the end of trial. Leave it as it is, once there is an altered memo on coming to know of the commission of the crime involving another offence of a grave nature, that is enough for compliance by the Investigating Officer. The other remark made by the learned trial Judge is a probability to the suggestion given by accused persons about PWs.5 and 6 demanding the accused to transfer the house property

and they influenced the Investigating Officer-PW.8 and it might be a reason in receiving Ex.P.6-report and registering Ex.P.7-F.I.R. for the offence under Section 506 IPC to implicate and later planted the so-called weapon of offence by utilizing PWs.3 and 4 so-called mediators to the disclosure and seizure by claiming that they are relatives of PWs.5 and 6. The said observation is far fetching. There is nothing even to say how PWs.3 and 4 are related to PWs.5 and 6. Even for arguments sake, there is anything and it be believed to give such suggestion while even retracting the so-called confession leading to disclosure including seizure of weapon as a fact discovered under Section 27 of the Evidence Act, 1872, for not retracted at the earlier stage and not even choosing to issue notice to the Investigating Officer had there been any little truth of the crime registered is for not obliging the demand by PWs.5 and 6 to the accused to transfer the house property for the Investigating Officer to be attributed as if as a privy with PWs.5 and 6 in foisting a false case by receiving Ex.P.6 to register Ex.P.7-F.I.R.

7. Having regard to the above, the said remarks adversely made by the trial Court against the Investigating Officer-PW.8 are without basis.

8. Hence, this criminal petition is allowed, as prayed for.

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

Dr. B. SIVA SANKARA RAO, J

6th October 2015.

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