

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32121 OF 2015

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ORDER:

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This Writ Petition, under Article 226 of the Constitution of India, is filed for the following relief:

“to issue a proper writ order or orders, particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not investigating and not prosecuting the respondent No.4 under Section 302 of Indian Penal Code in view of death of the petitioner's father caused due to the fracture injuries inflicted by respondent No.4 is arbitrary and illegal and consequently issue a direction to the respondents to further investigate and prosecute the respondent No.4 under Section 302 of IPC in addition to Section 325 of IPC.”

2. Heard Sri Mohd.Asifuddin, learned counsel for the petitioner and learned Government Pleader for Home (TG) for respondents 1 to 3, apart from perusing the material available before this Court.

3. Today, when the matter is called, written instructions, dated 07.10.2015, furnished by ASI, Gambhiraopet PS, Karimnagar District have been placed on record by the learned Government Pleader for Home and the said instructions read as under:

“It is submitted that on 20.05.2015, the Writ Petitioner/complainant lodged a complaint with Gambhiraopet PS stating that on 17.5.2015 when his father M.Shankaraiah was sitting in front of their new house, the 4th respondent – Mekarthi Malleshm was passing through the way and came near to his father. Then his father asked the 4th respondent to construct a wall on their old house. The 4th respondent instead of heeding to the said request, entered into altercation with his father. Thereafter, the 4th respondent pushed his father aside, and his father fell down. His father sustained right leg thigh fracture. As his father is a heart patient, his BP was shooting up and fell unconscious. Immediately, his father was taken to Srikar Hospital, Secunderabad, for treatment. The petitioner requested to police to take necessary action. The said complaint was registered as FIR No.57/2015

under Section 325 IPC on 20.05.2015 and took up for investigation.

It is submitted that after registering the crime, the complainant, his father, mother, brother and witnesses were examined and their statements were recorded. During the course of further investigation on 20.05.2015 itself, a Notice under Section 41-A Cr.P.C. was issued to the accused-4th respondent informing about his involvement in the case and as the offence is punishable below 7 years, the accused has acknowledged the receipt of the Notice and instructed the Accused to attend the Court after receipt of summons from the Hon'ble Court without any delay.

It is submitted that the hospital authorities issued M.C. wherein they opined that the injuries were "Inter Trochanteric Fracture."

It is submitted that after completion of investigation, Charge Sheet was filed on 27.6.2015 before the Hon'ble J.F.C.M. at Sircilla vide C.C.No.290/2015 and the matter is directed to be posted on 9.11.2015 for trial.

The allegation is that the 4th respondent influenced the police and investigation is not correct and denied. It is submitted that investigation has been done fairly and impartially. No malafides can be attributed to the same. It is submitted that based on the investigation, section of law will be added to the crime. The petitioner cannot dictate the police, in what manner investigation has to be done and which sections have to be added to the crime. It is not the case of the petitioner that the police have not arrested the accused. It is submitted that the Writ Petition is devoid of any merits and is liable to be dismissed."

4. On noticing the above said instructions, learned counsel for the petitioner has requested this Court to record the said instructions and dispose of the writ petition with liberty to the petitioner to take action as per the provisions of Code of Criminal Procedure.

5. In view of the above, the writ petition stands disposed of, by recording the written instructions, 07.10.2015 furnished by the ASI, Gambhiraopet PS, Karimnagar District, while leaving it open to the petitioner herein to avail remedies under Code of Criminal Procedure. There shall be no order as to costs.

6. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.V.SESHA SAI, J

OCTOBER 08, 2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Date: 08.09.2015