

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Petition No. 9136 of 2015

Order:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A1 and A2 seeking to quash the proceedings pending against them in CC No. 786 of 2012 on the file of the II Additional Judicial Magistrate of First Class, Eluru, West Godavari District, for the offences punishable under Sections 324 and 323 read with Section 34 IPC.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor representing the State.

3. The petitioners herein are A1 and A2 and the second respondent herein is the *de facto* complainant. The allegation against the petitioners/A1 and A2 is that on 18.09.2012 they assaulted the second respondent/*de facto* complainant and caused injuries to him. Originally, the complaint was filed against three persons, but the police, after investigation, deleted the name of the third accused.

4. Learned counsel for the petitioners submits that, according to the *de facto* complainant he sustained injuries on 18.09.2012, but whereas in the medical certificate as well as in the statement of the Medical Officer, it was mentioned that the *de facto* complainant was treated as out-patient on 16.09.2012, therefore, on this ground alone, the proceedings are liable to be quashed.

5. On the other hand, learned Additional Public Prosecutor submits that both in the medical certificate as well as in the statement of the Medical Officer the date was wrongly noted and during the course of trial necessary steps would be taken to produce the original record to elicit the truth as to whether the *de facto* complainant was treated by

the Medical Officer on 18.09.2012 or on 16.09.2012.

6. The question as to whether the *de facto* complainant was treated by the Medical Officer on 18.09.2012 or on 16.09.2012 has to be decided only after full fledged trial and on that ground alone the proceedings against the petitioners/A1 and A2 cannot be quashed at this stage, more particularly, when the case is of the year 2012, wherein the charges have been framed against the petitioners/A1 and A2 and the matter is coming up for trial. There is material, *prima facie*, sufficient to enquire into the allegations made against the petitioners/A1 and A2 in the charge sheet. The Criminal Petition is devoid of merit and the same is liable to be dismissed.

7. Accordingly, the Criminal Petition is dismissed. However, in the facts and circumstances of the case and as requested by the learned counsel for the petitioners, the II Additional Judicial Magistrate of First Class, Eluru, West Godavari District, is directed to proceed with the case in CC No. 786 of 2012 without insisting for the presence of the second petitioner/A2 herein for each and every adjournment unless his presence is required for any specific purpose.

8. As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Petition shall stand closed.

M.S.K. JAISWAL, J

Date: 26.10.2015
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