

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CRIMINAL PETITION No. 289 of 2015**

**ORDER:**

The petitioner, who is the sole accused, filed the present Criminal petition under Section 482 Cr.P.C. seeking quashing of the proceedings in C.C.No.273 of 2014 on the file of the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Bapatla. A charge sheet came to be filed against the petitioner herein for the offences punishable under Sections 323 and 354 IPC.

The allegations in the charge sheet are as under:

The accused was residing by the side of the house of LW.1 where she was residing lonely as her two sons were residing in Hyderabad. Taking advantage of loneliness of LW.1, accused is alleged to have stood by the side of LW.1, abused her in filthy language, made gestures, behaved indecently and harassed her mentally. When the same was informed to the neighbours, they admonished the accused in this regard. Since then, accused developed grudge against her. On 26.06.2014, at about 7.45 a.m. morning LW.1 brought her grand daughter on her scooty and purchased milk packets at the shop of LW.3. Later, LW.1 started from there to go to her house. At about 7.45 a.m. the accused also came there to take milk in the same shop, LW.1 is alleged to have hit against the accused from his behind with the scooty, when the accused questioned about the same, LW.1 parked her scooty, picked her chappal and beat the accused on the face and nose of the accused, thereby causing bleeding injury. In retaliation accused is alleged to have abused LW.1 in filthy language and when the accused tried to give a blow with his hand on cheek of LW.1, she escaped from the dealt, in the meanwhile, the hand of the accused fallen on the back side jacket of LW.1 with an intention to outrage the modesty of LW.1 in the public. Basing on these allegations the above charge sheet came to be filed.

Heard learned counsel for the petitioner, learned counsel for the second respondent, who got impleaded himself as party respondent and Public Prosecutor appearing for the respondent-State.

Learned counsel for the petitioner mainly submits that even accepting the

allegations in the report to be true no offence is made out against the petitioner. He submits that the incident did not happen in the manner narrated by the accused as the petitioner also lodged a report against the second respondent which came to be registered as Crime No.149 of 2014 of Bapatla Town Police Station.

Learned counsel for the second respondent opposed the application contending that the issues involve disputed questions of fact and the same have to be gone into during the course of trial.

The law laid down, in **State of Haryana v. Ch. Bhajan Lal**, which has been followed in several other judgments of the Supreme Court, is that interference under Section 482 Cr.P.C./Article 226 of the Constitution of India is permissible in cases (a) where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not, prima facie constitute any offence or make out a case against the accused; (b) where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code; (c) where the uncontroverted allegations made in the FIR or the complaint, and the evidence collected in support of the same, do not disclose the commission of any offence and make out a case against the accused; (d) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; and (e) where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with the ulterior motive for wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge. The Supreme Court further held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and the extraordinary or inherent powers do not confer arbitrary jurisdiction on the Court to act according to its whim or caprice.

Keeping in view the guidelines laid by the Apex Court, I shall now proceed to deal with the matter.

The averments in the report disclose that on the date of the incident at about 7.45 a.m. accused went to the market for purchasing milk packet and after purchasing milk packet, he was proceeding towards shop. In the mean time, the second respondent is alleged to have hit him from behind with her scooty in which she was travelling. When the accused questioned her about the same, the second respondent is alleged to have parked the scooty and beat the petitioner with chappal causing bleeding injury. Thereafter, the petitioner is alleged to have abused her in filthy language. It is further alleged that the accused caught hold of the jacket of the second respondent, dragged her and beat on the back of the second respondent with a view to outrage her modesty.

From the averments made in the report, it is clear that LW.1 assaulted the petitioner and at the same time the petitioner also assaulted LW.1 and tried to outrage her modesty. In respect of the assault made by on the petitioner, a case in Crime No.149 of 2014 of Bapatla I Town Police Station came to be registered against the informant. A reading of both the reports would show that the incident in both the cases took place on 26.06.2014 at about 7.45 a.m. Further, the presence of both the persons at the scene of offence stands established and both the offenders assaulted each other. Since the issues involve disputed questions of fact, the question of quashing the proceedings does not arise. Having regard to the circumstances of the case, the present Criminal Petition is dismissed. But however, the presence of the petitioner in C.C.No.273 of 2014 on the file of the Additional Junior Civil Judge-cum-Judicial First Class Magistrate, Bapatla, is hereby dispensed with except on the dates when his presence is specifically required by the Court. It is always open to the accused in both the cases to take appropriate steps for trying of both the cases together.

Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, shall stand closed.

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**C. PRAVEEN KUMAR, J**

10.04.2015

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