

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4000 of 2015

ORDER :

This Criminal Petition is filed by the Petitioners/Accused Nos.6 to 9 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.122 of 2013 on the file of the Court of Judicial Magistrate of the First Class, Narasannapet, Srikakulam District arising out of Crime No.130 of 2012 on the file of the Polaki Police Station, Srikakulam District for the offences punishable under Section 324 and 323 read with 34 I.P.C.

2) In fact on the report of the 2nd respondent/defacto-complainant, the crime was registered by police as Crime No.130 of 2012 and investigated for the above offences and the police after investigation filed final report by partly stating case made out so far as accused Nos.1 to 5 concerned and by stating no case was made out so far as accused No.6 to 9 concerned in saying one of the accused was on duty in Army, at that time from the certificate issued by the Army Officer concerned also. Thereby, the taking of cognizance by the learned Magistrate from that prosecution material enclosed to the final report under Section 173 read with 190 Cr.P.C, without even protest petition from the defacto-complainant also is unsustainable is the submission by the counsel for the petitioner.

3) Heard the learned Public Prosecutor in saying the learned Magistrate got the absolute and unfettered power under section 190 Cr.P.C without even giving any notice by inviting protest petition from the defacto-complainant, by differing to the opinion of the investigating officer from the material on record of application of mind. A perusal of the investigation material, this petition falls short to admit under Section 482 Cr.P.C but for the remedy is elsewhere in the course of hearing the charges and to submit any defence to consider if any case to frame charge under Section 239 Cr.P.C including as to all by placing the so called certificate and any other material and to decide on own merits from prosecution material vide ***State of Orissa***

V. Debendranath Padhi. Needless to say that if the petitioners want to set up their part of defence including to confront the same with the prosecution witnesses.

4) With the above observations, the criminal petition is disposed of.

5) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08th June, 2015

KSH