

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5104 of 2015

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ORDER :

This criminal petition is filed by the petitioners/A.1 to A.3 under Section 482 Cr.P.C seeking to call for the records or to quash the proceedings relating to the order dated 11.05.2015 passed in Cr.M.P.No.370 of 2015 in C.C.No.489 of 2010 by the Special Magistrate, Dharmavaram.

2. Heard the learned counsel for the petitioners as well as the 1st respondent-State represented by the Public Prosecutor before admission and before ordering any notice to the 2nd respondent and perused the material on record.

3. The grievance of the petitioners in approaching this Court under Section 482 Cr.P.C. is to impugn the order of the learned Magistrate in Cr.M.P.No.370 of 2015, which was filed under Section 91 Cr.P.C. by the Assistant Public Prosecutor seeking permission of the Court to examine the medical records relating to the treatment of the de facto complainant-injured (LW.1) undergone by him in Narayana Netralaya, Bangalore. The learned Magistrate allowed the application with the observation that at the time of issuing summons to LW.7-Medical Officer, Government Hospital, Dharmavaram, where LW.1 initially

admitted and treated to say anything about the reference or undergone by him. In fact, in the particulars furnished, LW.1 was given treatment at Narayana Netralaya, Bangalore, with ID.No.306647 and the name of the injured is Girika Sangalappa, who is LW.1 herein. No doubt, it is the submission that neither in the F.I.R. nor in the charge sheet or in the Part-II C.D., there is any whisper about the treatment in Narayana Netralaya, Bangaore, much less from the statement of LW.7 about his referring for better treatment. In fact, the learned Magistrate ought to have been invoked in allowing the application either under Section 311 Cr.P.C. Part-I or II read with 165 of the Evidence Act read with 242 Part-II Cr.P.C., if any, and if at all, there is any whisper from the mouth of the injured-LW.1 about his undergoing treatment in Narayana Netralaya, Bangalore, after treatment at Government Hospital, Dharmavaram through LW.7 either referred or otherwise, without even such whisper LW.1 by coming to witness box, it is premature for the prosecution or the Magistrate to presume the necessity of such evidence.

4. Having regard to the above, the order in Crl.M.P.No.370 of 2015 is set aside and the remedy is left open to the prosecution or the de facto complainant/injured as the case may be to seek for summoning of the record and to give evidence. For that initially the injured has to come to witness box and if he deposed anything of his undergoing treatment at the

Narayana Netralaya, Bangalore, then for differing PW.1 further examination-in-chief and to consider any necessity of summoning record to proceed with further chief-examination of PW.1 with reference to s /aid record. Leave about any necessity of further confronting or deposing through LW.7 or the Investigating Officer or the witness being summoned from the Narayana Netralaya.

5. With the above observation, the criminal petition is disposed of.

6. Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

22nd June 2015.

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