

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.218 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/Accused to quash the proceedings in Cr.No.9 of 2012 on the file of the IV Town Police Station, Nellore, registered for the offences under Sections 353,506 and 290 of I.P.C. on the report of the 2nd respondent/defacto-complainant.

2. Heard the learned counsel for the petitioner and also the learned Public Prosecutor for the 1st respondent-State before admission and before notice to the 2nd respondent and perused the material on record.

3. No doubt, as can be seen from the very report of the defacto complainant there is no public nuisance to attract Section 290 of I.P.C. Now there remains only Section 353 and 506 of I.P.C. So far as the 506 of I.P.C. is concerned, it is criminal intimidation which is per se non-cognizable. Once the offence under Section 353 is cognizable equally non-cognizable offence can be taken by the police for that also.

4. It is the submission of the learned counsel for the petitioner that no offence under Section 506 of I.P.C. is made out. So far as the offence under Section 353 of I.P.C. is concerned, it is the submission of the learned counsel for the petitioner as per the very remand report of the learned Magistrate from the very report of the deacto-complainant that he was allegedly on the escort duty to take a remand prisoner to jail and the abuses were while on duty, the learned Magistrate remand order no way speaks of he is one of the persons escorted much less to say on duty but for one police constable and another Head Constable with different particulars given and it is the submission therefrom that when the public document itself shows the false report of the petitioner and is liable to be quashed. It is not the case that he is on other duty at any particular place as per the concerned police Roaster Register, if any. Thus, it is not possible to make any opinion at this stage pending investigation from that contest but for to furnish any such particulars to the Investigating Officer to consider as part of the investigation material. Needless to say on the very maintainability of the 2nd complaint as the earlier one impugning the FIR was dismissed vide Crl.P.No.1126 of 2012 for default on 11.04.2014.

5. Having regard to the above, this Criminal Petition is disposed of while quashing for the offence under Section 290 IPC, and dismissed the petition in other respects so as to allow the investigation that shall go on for the offences under Sections 353 and 506 of I.P.C. The police are directed to complete the investigation and file final report within three months by virtue of this order. After filing of the final report and taking of cognizance by the learned Magistrate, further remedies left open including to file fresh quash petition with relevant material. Consequently, miscellaneous applications, if any, pending in this Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 22.09.2015

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