

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL PETITION No.113 of 2013**

**ORDER:**

In this Petition filed under Section 482 Cr.P.C., the petitioner/accused No.1 seeks to quash the proceedings in CCNo.346 of 2010 on the file of Judicial First Class Magistrate (Special Mobile) at Kamareddy, Nizamabad District, whereunder he along with two others was charged for the offence under Section 338 of Indian Penal Code.

The complainant/injured filed a private complaint before learned Judicial First Class Magistrate, Kamareddy, alleging that she is resident of House No.5-3-365 at Vidyanagar Colony, Kamareddy, and her husband runs Kirana shop in the same premises bearing Municipal No.5-3-365 and the electrical main line is passing in front of the shop of the complainant. On 21.11.2008 at about 11.45 am, the accused, who are the employees of AP Transco, started their work at the electrical polls for pulling the main line wire in between two electrical polls in a rash and negligent manner and as the main line wire between the said two poles was hanging in air, the husband of the complainant, cautioned the accused to do their work carefully or otherwise, the wire may fall in the ground causing injuries to the by-passers, but they did not heed him and attended the work in a careless manner and at about 12.00 noon on 21.11.2008, when the complainant came out of the shop to go to her house to attend calls of nature, the electrical main line wire fell on the complainant causing injuries on her left eye.

Hence, the complaint.

Learned Magistrate, who has taken cognizance, initially referred the case to Police and the police of Kamareddy Police Station registered the same in Cr.No.288 of 2009 under Section 338 and after investigation, filed final report treating the case as accidental. Thereupon, it appears, the complainant filed a protest petition No.814 of 2010 and as per the Docket Order dt. 23.07.2010, the Trial Court has accepted the protest petition and took cognizance of the case under Section 338 of IPC and registered the same as C.C.No.346 of 2010. Hence, the instant quash petition by the accused No.1.

It is argued that the accused are the public servants and they are discharging the public duties and the offence under Section 338 IPC has no application, the trial Court has erroneously taken cognizance of the protest petition without there being any sufficient material and therefore, continuance of the proceedings against the petitioner would amount to abuse of process of the Court.

Learned Public Prosecutor opposed the petition stating that upon finding sufficient material, the trial Court has taken cognizance of the offence and the petitioner, if aggrieved, can approach the trial Court and vindicate his defence stand.

I find force in the submission of learned Public Prosecutor. The trial Court, upon recording sworn statements of the complainant and PW.2, the Doctor, who treated the complainant, has come to the *prima facie* conclusion that there was a case for the complainant under Section 338 IPC and issued notice to the accused on 31.08.2010. Therefore, at this

stage, the action of the trial Court cannot be found fault and the petitioner/accused No.1 can put forth all his defence pleas before the trial Court during the course of hearing and I am sure, the trial Court will consider the same and pass appropriate orders, on merits.

With these observations, this Criminal Petition is dismissed.

Consequently, the miscellaneous petitions, if any, pending, in this case, shall stand closed.

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**U. DURGA PRASAD RAO, J**

Date: 04.07.2016

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Dt. 04.07.2016

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