

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL PETITION No.2564 of 2013**

**ORDER:**

In this petition filed under Section 482 Cr.P.C, the petitioner/A2 seeks to quash the proceedings in C.C.No.466 of 2012 on the file of Additional Judicial First Class Magistrate, Addanki wherein himself and his father A.1 were charge-sheeted for the offence under Sec.326 r/w 34 IPC.

2) The prosecution case is thus:

a) LW.2—married daughter of A.1 and due to some disputes, she left his society along with her twins and came down to her father's place Addanki. So on the night of 23.08.2012 at about 9:00pm, LW.2 along with LW.1 and some other elders went to the house of A.1 to hold mediation in order to bring back his wife and children. At that time A.1 who is an RTC conductor, was on duty and absent at home. So they were holding talks with A.1's wife—Ramadevi and her daughter—Laxmi Kumari. Then the further case of prosecution is that at about 11:30pm, A.1 returned home from duty and on seeing LW.1 and others at once enraged and started abusing them in filthy language. When LW.1 tried to pacify him saying that elders came to hold talks, A.1 further infuriated and tried to beat LW.1 on his head with a wooden seat used by the

conductors and when LW.1 tried to avoid the blow by keeping his hand across the head, the blow fell on his right hand and his finger was fractured. Then LW.1 raised cries and on hearing the same, the elders who were sitting inside house rushed there and questioned A.1. In the meanwhile, A.2, who was present there brought a pestle from the house and terrorized them by proclaiming that he would hit them. On that all of them got afraid and went inside the room and locked the doors. A.2 broke open the doors and went inside the room to beat the elders and LWs.1 and 2. When they chastised him, he fled away through the backyard. In the meanwhile, the neighbours and beat constables came there and sent them away. On the complaint lodged by LW.1, the police of Addanki P.S registered a case in Crime No.181 of 2012 against A.1 and A.2 initially for the offence under Sec.324 r/w 34 IPC and after investigation laid charge sheet under Sec.326 r/w 34 IPC as the injury sustained by LW.1 was grievous in nature.

Hence, the instant quash petition by petitioner/A.2.

3) Heard arguments of Sri M.Sudheer Kumar, learned counsel for petitioner; Sri Nimmagadda Satyanarayana, learned counsel for 2<sup>nd</sup> respondent/*defacto* complainant and learned Public Prosecutor for the State.

4) Learned counsel for petitioner sought to quash the

criminal case on two grounds:

a) Firstly that the instant case is a counterblast to the FIR No.180 of 2012 lodged by A.1 in respect of same incident as per which, himself and his family members were attacked by the present complainant and some others and therefore, there is no truth in the subsequent complaint lodged by LW.1.

b) Secondly, learned counsel argued that even if prosecution case is uncontroverted, no charge under Sec.326 r/w 34 IPC is maintainable against petitioner/A.2 because there was no sharing of common intention between A.1 and petitioner/A.2 in causing injury to LW.1.

5) Per contra, learned counsel for R.2/*defacto* complainant argued that the petitioner/A.2 was present at the scene and shared common intention with his father and in fact he terrorized the elders holding a pestle in his hand and therefore, the offence under Sec.326 r/w 34 IPC is very much sustainable against him though he has not personally attacked LW.1. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

*“Whether there are merits in this Petition to allow?”*

7) **POINT**: On scrutiny of record, I find force in the

submission of learned counsel for petitioner/A.2. Section 34 lays deals with the doctrine of joint liability or constructive liability and it is an exception to the general principle that there can be no vicarious liability in crimes. This section lays down that when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. To apply this principle, the prosecution has to establish the existence of common intention among the accused leading to the doing of a criminal act in furtherance of such common intention. The common intention implies acting in concert, the existence of a prearranged plan. Therefore, there requires a prior meeting of the minds. For prior meeting of minds, it is not necessary that long interval of time must elapse between the meeting of the mind and perpetration of the act. On the other hand, the common intention may develop and be formed suddenly on the spur of the moment. This principle was discussed by the Apex Court in a catena of decisions. In ***Mewa Ram and others vs. State of Rajasthan***<sup>[1]</sup>, the Apex Court observed thus:

*“**Para 7:** It is noticed that there is fundamental difference between common intention and joint intention. Section 34 of the Indian Penal Code talks of common intention which is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention and to fasten with the same liability as that of the main accused who was*

*perpetrator of the crime. The ingredients of common intention to be proved are: (i) there is a common intention on the part of more than one person to commit a particular crime; and (ii) the crime was actually committed by them in furtherance of that common intention. Essence of liability Under Section 34 is simultaneous conscious mind of person participating in the criminal action to bring about a particular result.”*

8) When the above principle is applied to the instant case, we will find that there was no common intention among A.1 and A.2 for the reason that as per prosecution case, as soon as A.1 returned home, having found LW.1 and others, he got infuriated and started abusing them. When LW.1 tried to pacify him stating that elders came for holding talks, he attacked him with wooden seat and tried to hit him on his head and when LW.1 put his hand across the head, he received a blow on his finger which was fractured. Even if the above episode is uncontroverted, still no pre-concert of minds and sharing of common intention between A.1 and A.2 can be inferred from the prosecution case for the reason that A.1 at once attacked LW.1 and as per prosecution case, there was no sharing of minds between them to cause the offence. Though A.2 was at the scene of offence, the facts would not narrate that he had any knowledge, much-less intention that A.1 was going to attack LW.1. Therefore, as rightly argued by learned counsel for petitioner, the petitioner cannot be held constructively liable for the offence under Sec.326 r/w 34

IPC. The continuation of the proceedings against him for the offence under Sec.326 r/w 34 IPC would amount to abuse of process of the Court and hence liable to be quashed. However, that is not the end of the matter. If prosecution case is uncontroverted, it would reveal, petitioner/A.2 did commit certain acts such as terrorizing the LW.1 and other elders holding a pestle in his hand. Therefore, the trial Court upon perusal of the record needs to frame a suitable charge against him for such acts, if in its view such acts tantamount to an offence.

9) In the result, this Criminal Petition is partly allowed and the proceedings in C.C.No.466 of 2012 on the file of Additional Judicial First Class Magistrate, Addanki against petitioner/A.2 for the offence under Sec.326 r/w 34 IPC are quashed but at the same time, the trial Court is directed to frame a suitable charge against petitioner/A.2 as per law if in its considered view, the acts of petitioner/A.2 tantamount to an offence and try him accordingly along with A.1.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

---

**U. DURGA PRASAD RAO, J**

Date: 09.08.2016

scs

---

[\[1\]](#) MANU/SC/0605/2016 = 2016 SCC Online SC 608