

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2413 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 21.07.2015 passed in CrI.M.P.No.14 of 2015 in S.C.No.245 of 2014 on the file of the Court of the Principal Assistant Sessions Judge, Rajampet.

2. The contention of the learned counsel for the petitioner is that even if the allegations made in the charge sheet *ex facie* taken to be true and correct, no case is made out against the petitioner under Section 326B of I.P.C. and the same was not considered by the trial Court. He further submitted that there is no whisper in the statements of the witnesses that the petitioner carried the acid bottle with an intention to cause acid injury to the *de facto* complainant. He also submitted that the order passed by the trial Court is not sustainable.

3. *Per contra*, the learned Public Prosecutor submitted that the trial Court rightly considered various aspects and dismissed the petition. He further submitted that this is not the stage to go into the merits of the main case.

4. A perusal of the record reveals that one Bharathi lodged a complaint against the petitioner to the Station House Officer, Mannur Police Station, who in turn registered a case in Crime No.1 of 2014 for the offences punishable under Sections 341, 354 and 506 of I.P.C. on 02.01.2014. After completion of the investigation, the investigating officer laid charge sheet against the petitioner

under Sections 341, 354 and 506 I.P.C. The learned Magistrate while taking cognizance of the offences added Section 326B of I.P.C. and committed the case to the Assistant Sessions Division, Rajampet, who in turn numbered it as S.C.No.245 of 2014.

5. The petitioner filed CrI.M.P.No.14 of 2015 in S.C.No.245 of 2014 under Section 227 of Cr.P.C. for discharge for the offence punishable under Section 326B of I.P.C. and the same was dismissed.

6. The predominant contention of the learned counsel for the petitioner is that the trial Court having arrived at a conclusion that the petitioner was not having acid bottle with him at the time of incident, ought not to have framed the charge under Section 326B of I.P.C. I have carefully perused the statements of the witnesses and the charge sheet.

7. The learned Public Prosecutor also, in all fairness, submitted that on the date of the alleged incident, the petitioner was not having acid bottle with him.

8. Section 326B I.P.C. deals with voluntarily throwing or attempting to throw acid. In order to constitute an offence under Section 326B of I.P.C., the accused must have acid bottle with him. It is not the case of the prosecution that the petitioner was having acid bottle with him on the date of the incident. In the absence of acid bottle, throwing of acid on the *de facto* complainant does not arise. Even if the allegations made in the charge sheet *ex facie* taken to be true and correct, no case is made out against the petitioner for the offence punishable under Section 326B of I.P.C.

In such circumstances, compelling the accused to face the trial for the offence under Section 326B of I.P.C., certainly would amount to miscarriage of justice. The allegations made in the charge sheet are bereft of the ingredients of Section 326B of I.P.C. The trial Court has not considered the material available on record and dismissed the petition on erroneous grounds. If there is any illegality, irregularity or impropriety in the orders of the trial Court, this Court can set aside the same by exercising the revisional jurisdiction under Section 397 of Cr.P.C.

9. Having regard to the facts and circumstances of the case, it is a fit case to set aside the order dated 21.07.2015 passed in CrI.M.P.No.14 of 2015 in S.C.No.245 of 2014 on the file of the Court of the Principal Assistant Sessions Judge, Rajampet.

10. In the result, the Criminal Revision Case is allowed setting aside the order dated 21.07.2015 passed in CrI.M.P.No.14 of 2015 in S.C.No.245 of 2014 on the file of the Court of the Principal Assistant Sessions Judge, Rajampet. Consequently, CrI.M.P.No.14 of 2015 is allowed discharging the petitioner/accused in S.C.No.245 of 2014 for the offence punishable under Section 326B of I.P.C. only.

11. Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.11.2016
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