

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15267 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the order dated 28.10.2011 passed in CrI.M.P.No.1215 of 2011 in Crime No.239 of 2010 passed by the Judicial Magistrate of First Class at Husnabad.

The petitioners are Accused 1 to 3 and they allegedly committed an offence punishable under Sections 324,506 r/w 34 IPC and 420 IPC. The case of the prosecution from the beginning is that one Bhukya Mohan gave a compliant to the police, which was referred as false case. Thereupon, a private complaint was filed before the Judicial Magistrate of First Class at Husnabad and the Trial Court by exercising power under Section 156(3) referred the matter to the police. The police after making necessary investigation filed final report on 20.11.2010 treating the case as false and they requested the Magistrate to issue necessary instructions. Thereupon, the petitioner/complainant Bhukya Mohan filed a protest petition before the Court in Cr.M.P.No.1215 of 2011 in Crime No.239 of 2010 and after recording evidence of Bhukya Mohan, Banothu Raju and Dharavathu Lingaiah, the Judicial Magistrate of First Class at Husnabad passed order on 10.03.2014 and took cognizance of the case by applying its mind for the offence punishable under Sections 324,506 r/w 34 IPC and 420 IPC, but as seen from the material on record, the facts would not constitute the offence punishable under Section 420 and it was never his case that the accused cheated the

petitioner, except alleging that A-1 & A-2 offered their daughter in marriage with the defacto complainant Bukya Mohan, but their marriage was not performed, obviously for different reasons, as stated by the defacto complainant Bukya Mohan in his statement. But that was not *prima facie* constitute an offence punishable under Section 420. However, the specific allegations made in the protest petition as well as in the statement before the Magistrate by Bhukya Mohan, Banothu Raju and Dharavathu Lingaiah would attract an offence punishable under Sections 324 & 506, *prima facie*, on the face value of the allegations, if proved. But, it would not attract the offence punishable under Section 420.

The learned counsel for the petitioners contended that there is a discrepancy with regard to the scene of occurrence, but that cannot be looked into at this stage while deciding a petition under Section 482 of Cr.P.C. Hence, I find no ground to quash the proceedings in C.C.No.112 of 2014 on the file of the Judicial Magistrate of First Class at Husnabad for the offences punishable under Sections 324, 506 r/w 34 I.P.C. However, there is no allegation either in the protest petition or in the complaint or atleast in the statements recorded by the Judicial Magistrate of First Class at Husnabad, before taking cognizance during enquiry on the protest petition to attract the offence punishable under Section 420. Therefore, the cognizance taken by the Court for the offence punishable under Section 420 is hereby quashed while rejecting the relief to quash the order passed by the Judicial Magistrate of First Class at Husnabad for the offence punishable under Sections 324, 506 r/w 34 I.P.C.

Learned counsel for the petitioners finally contended that Accused No.2 is staying at Mandamuru and it is difficult for her to appear before the Court on all the dates of adjournments undertaking tedious journey and requested to dispense with her appearance before the Court. But, this power can be exercised by the Magistrate under Section 205 of Cr.P.C. Consequently, the petitioner is directed to file appropriate application to dispense with her appearance after giving notice to public prosecutor and on such application, the Magistrate is directed to decide on the same day.

In the result, the criminal petition is allowed-in-part, quashing the proceedings dated 28.10.2011 passed in Crl.M.P.No.1215 of 2011 in Crime No.239 of 2010 passed by the Judicial Magistrate of First Class at Husnabad.

It is needless to mention that the observations if any made in the above order shall have no bearing on disposal of C.C.No.112 of 2014 pending before the Trial Court and the Judicial Magistrate of First Class at Husnabad is directed to decide the matter uninfluenced by the observations made hereinabove.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.10.2016
SP