

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3936 OF 2017

ORDER:

Heard learned counsel for the petitioner/accused of C.C.No.1015 of 2016, pending on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad and also the learned counsel for the 2nd respondent – defacto complainant, who are no otherthan brother and sister and also heard the learned public prosecutor, representing the 1st respondent – State and perused the grounds urged in the quash petition seeking to quash the said calendar case and the police final report and Part II case diary from the FIR and the wound certificate and it shows the dispute between brother and sister and the alleged occurrence of beating and threatened with dire consequences in registering the crime for the offences under Sections 323 and 506 IPC is in the death ceremony of mother of the two persons and it shows there is some property dispute. The petitioner seeks to consider the so-called affidavits given by some of the witnesses to the investigation, who want to resile from their statements before the Investigation Officer to say that they were not examined. This Court cannot consider the same at this stage, but for following the expression of the Hon'ble Apex Court in ***Rukmini Narvekar Vs. Vijaya Satardekar & Ors***¹, where the Hon'ble Apex Court observed that as an exceptional case

¹ AIR 2009 SC 103

even trial court may consider the same, hence, the petitioner is given liberty to file such affidavits before the learned Magistrate with application for discharge to be filed in the course of hearing on charges and the learned Magistrate may consider the affidavits and the authenticity after securing the presence of the said versions of the deponents and there from pass appropriate orders on the charges to be framed or discharge to be made, as the case may be, on own merits. Needless to say if at all any inconvenience of personal appearance for the petitioner, he can file application under Section 205 Cr.P.C., for the learned Magistrate to hear and consider on merits.

2. Accordingly and with the above observation, this criminal petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

13.10.2017
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