

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.15059 of 2014 and 9644 of 2015

COMMON ORDER :

The petitioners in Criminal Petition No.9644 of 2015 are accused Nos.1 and 2 by names P.Murali Krishna and P.Aparna-wife of P.Murali Krishna, in C.C.No.117 of 2014 pending on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, which is out come Crime No.337 of 2013 of S.H.O., III-Town L & O Police Station, Rajahmundry, registered for the offences punishable under Sections 325 and 506 read with 34 IPC, basing on the report of the 2nd respondent/de facto complainant-P.Surya Prakasa Rao, no other than the brother of accused No.1.

2. The Criminal Petition No.15059 of 2014 is filed by accused No.2 Smt.M.Madhavi W/o.P.Surya Prakasa Rao (who is the de facto complainant of Crime No.337 of 2013) of C.C.No.175 of 2014 pending on the file of the self same III Additional Judicial First Class Magistrate, Rajahmundry, which is out come of Crime No.336 of 2013, dated 22.09.2013, of the selfsame S.H.O., III town L & O Police Station, Rajahmundry, from the report of the de facto complainant-P.Aparna, no other than the wife of accused No.1 of the above referred Crime No.337 of 2013 of even date that was registered for the offences punishable under Sections 354, 323 and 506 read with 34 IPC.

3. Practically both are with rival claims and case and counter between the two brothers and their respective wives.

4. The above Crime No.337 of 2013 covered by C.C.No.117 of 2014 registered is on the report of P.Surya Prakasa Rao supra, dated 22.09.2013. The statement of the de facto complainant during investigation in tune to the F.I.R. in registering the crime speaks that there are civil disputes in the Court between the de facto complainant-Surya Prakasa Rao and his brother Murali Krishna supra and while so on 19.09.2013 at about 3.00 p.m., the de facto complainant-Surya Prakasa Rao and his wife Madhavi were entering into the Khajana Jewellery shop, near Kotagummam Centre of Rajahmundry town, the 1st accused-Murali Krishna, his wife Aparna and one N. Nageshwara Rao and his wife Vijaya Rani coming out from that jewellery shop and having seen abused them and Murali Krishna dashed his shoulder, for which he did not bother, again Murali Krishna entered into jewellery shop and again dashed his shoulder and hit, he did not bother with all tolerance, but for questioning his action for the second time, for which he beat and accused No.2-Aparna pushed him and Vijaya Rani beat him with hands and Murali Krishna meantime secured an iron rod and while dealt a blow on his head, he escaped by guarding with right hand, for which his right hand is fractured, Nageshwara Rao also beat him on his face and he sustained to the lower lip bleeding injury and he and his wife while went to the Police Station in the way of P. Kishore along with ten persons threatened him to kill saying he could escape thrice for the earlier attempts and he and his wife however escaped from their clutches and went to

Police Station and on the advice of police personnel went to hospital for treatment and on 22.09.2013 came to the Police Station and given report and informed the occurrence and when police asked and recorded the above facts. The statement of LW.2, no other than his wife Madhavi, dated 22.09.2013, is that she is almost reiterating the same of her husband as she was beaten out side the Khajana shop for her husband questioned them. LW.3-M.Veerraju deposed that he is a security guard in Khajana Jewellery shop and he was on duty on 19.09.2013 and it is about 3.30 p.m. at the steps of Khajana Jewellery shop two families were altercating and abusing, which he came to know by names Pilli Murali Kirshna, his wife Aparna, Pilli Surya Prakasa Rao and his wife Madhavi and Surya Prakasa Rao beat the wife of Murali Krishna with hands and Murali Krishna therefrom picked up a stick and while trying to dealt a blow on Surya Prakasa Rao, he guarded his hands, from which he sustained injury to his hand and the persons thereby gathered separated them and they left. LW.4-Yadagiri Madhusudhana Rao, Manager of the Khajana Jewellery Shop, stated that out side the shop at about 3.30 p.m. when some altercation was going on, he came out from the shop and noticed four persons altercating, who are two male and two female, and the persons gathered there separated them. LW.5-T.Suresh, who is working as a boy in the parking place of Khajana Jewellery Shop, stated that two families were altercating by abusing and the persons gathered there separated them. The police final report refers the same.

The wound certificate of the Assistant Civil Surgeon, District Headquarters Hospital, dated 19.09.2013 shows the patient was admitted and examined at 8.45 p.m. of the alleged occurrence at 3.30 p.m. and brought by P.C.No.856 of III Town Police Station and found abrasion at lower limb right side of 1 x 1 red in colour and defused swelling at dorsum of right hand and x-ray with radiology finding shows fracture of first metacarpal bone and admitted on 19.09.2013 and discharged on 21.09.2013.

5. The contentions in the quash petition are that it is a counter blast to the Crime No.336 of 2017 covered by C.C.No.175 of 2014 and the petitioners are innocents and falsely implicated and the alleged fracture is not caused on any attack by accused No.1. The counsel for the petitioners reiterated the said contention. Whereas, the counsel for the 2nd respondent-de facto complainant and learned Public Prosecutor submits that there is nothing to quash the proceedings and mere delay in reporting is fatal and medical certificate also shows the occurrence.

6. Coming to Crl.P.No.15015 of 2014, the crime registered on even date for the alleged occurrence, time and place set out, the de facto complainant saying she and her husband, her father and mother went to Khajana Jewellery shop and at about 3.30 p.m. after purchase of silver glass for Annaprasana, while they were entering into shop, P.Surya Prakasa Rao (brother of Murali Krishna) and his wife Madhavi by coming out, came across at the steps of the Khajana

Jewellery shop and started abusing them in filthy language keeping in mind the civil property dispute pending between the brothers, Surya Prakasa Rao pointing out Murali Krishna with finger as 'Narikesta' and Murali Krishna when questioned Surya Prakasa Rao why are you abusing and asked to do his work and on that accused Nos.1 and 2 grew wild and forcibly came towards them to kill and accused No.1 outraged the modesty of P.Aparna-de facto complainant by caught hold of her tuft and beat her indiscriminately and fisted on her right eye and on her back, for which Murali Krishna tried to rescue her, accused No.1-Surya Prakasa Rao beat him with hands and pushed him aside, accused No.1 also put his hands on her breast of P.Aparna and pushed her aside and accused No.2 beat with hands and provoked accused No.1 to kill them and her husband Murali Krishna rushed to III Town Police Station and brought the police people meantime. The witnesses gathered there rescued her from the hands of accused. The report was registered as crime at 4.00 p.m. on that day and she was sent to the Government Headquarters Hospital, Rajahmundry, and the crime registered is under Sections 354, 323 and 506 read with 34 IPC.

7. In the course of investigation, the police examined Aparna and her husband Murali Krishna, father and mother of Aparna, by name, Nageshwara Rao and Vijaya Rani, one G.Durga Prasad and A.Veerababu, student of Dowleswaram.

8. Police during investigation deleted the offence under Section 354 IPC and filed final report only for the offence under Section 509

IPC, altered Section 354 IPC to Section 509 IPC against accused No.1. It is aggrieved thereby, the said de facto complainant-Aparna filed a private complaint for the offences under Sections 354, 323 and 506 read with 34 IPC and the learned Magistrate it appears taken cognizance for the same.

9. The contentions in the quash petition grounds urged are that the police during investigation filed final report against accused No.1 only for the offence under Section 509 IPC for no offence under Section 354 IPC has been made out, apart from, some not sustainable and to file private complaint, there is no basis, much less any new material and the cognizance partly by the Magistrate is unsustainable. The police final report in the form of charge sheet against accused No.1 shows the de facto complainant sent to Hospital, there is only O.P. chit by the Government Hospital, Rajahmundry and wound certificate is enclosing with the private complaint. In the quash petition, this material not even filed.

10. Learned counsel in the quash petition reiterated the same of there is no basis even to take cognizance on the private complaint for the additional offence when the police filed final report against accused No.1 only for the offence under Section 509 IPC to add Sections 354, 323 and 506 read with 34 IPC. Whereas, the counsel for the de facto complainant-respondent No.1 to the quash petition submits that there is no interfere with the cognizance order of the Magistrate from the police final report is an incomplete and artisan.

11. Heard both sides.

12. LW.1-Aparna's statement shows the occurrence taken place at the out side of Khajana Jewellery shop and accused No.1-Surya Prakasa Rao beat her on back with hands without caring that she is a woman and caught hold of her tuft and fisted on her right eye, when she came to the rescue of her husband, whom accused No.1 was beating.

13. LW.2-Murali Krishna reiterated what LW.1 stated. LW.3-Veerraju states that he is a security guard in the Khajana Jewellery shop and the occurrence taken place out side the shop at 3.30 pm. between the pairs viz., Pilli Murali Krishna, his wife Aparna, Pilli Surya Prakasa Rao, his wife Madhavi, which he came to know said names and when Surya Prakasa Rao abusing the wife of Murali Krishna, Murali Krishna picked up a stick available and when beating, it caused injury to the hand of Surya Prakasa Rao and persons gathered separated them and they left. LW.4-Yadagiri Madhusudhana Rao, Manager of Khajana Jewellery Shop, also stated the same. LW.5-Suresh, a boy working at parking place of Khajana Jewellery shop, also reiterated the same.

14. From the above versions in the two cases, which are case and counter, at the time of occurrence only four persons Surya Prakasa Rao, his wife Madhavi, and Murali Krishna, his wife Aparna are there from the independent witnesses versions of the occurrence outside the Khajana Jewellery shop and it is in their abuses and altercations

Murali Krishna dealt a blow on Surya Prakasa Rao that caused fracture of first metacarpal bone. Once such is the case, any delay in reporting no way requires interference and the statements of witnesses once show Aparna's tuft caught hold by Surya Prakasa Rao, beat her back shows attracting of Section 354 IPC and Section 323 IPC and not mere Section 509 IPC. From this, but for the trial Court from the material to frame appropriate charges for simultaneous trial of both the cases, there is nothing to quash the proceedings in toto in both the cases. The trial Court shall consider on any application filed under Rule 37 of Cr.P.C. for one to represent the others in both the cases unless personal appearance required to so direct as per the necessity.

15. From the above versions in the two cases which are practically case and counter, no other between the two brothers, undisputedly, outcome of the civil dispute with animosity for the alleged attack opposite to Khajana Jewellery shop at the alleged time for their simultaneous presence for the alleged purchase of the Jewellery, a perusal shows from the witnesses versions contra to the very versions in the two FIRs and even regarding the alleged beating not even with a pre meditation. Leave about there is an abnormal delay in giving the report for the case and counter, suffice to say, it is outcome of animosity to wreck vengeance by one against the other and not in legitimate prosecution of the case, thereby, to sub-serve the ends of justice, both the FIRs are quashed and the bail bonds of the accused if any cancelled.

Miscellaneous petitions pending, if any, in the criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

22nd November 2017.

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