

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.3866 of 2017

ORDER :

The petitioners, parents of the infant, both shown as A.2 in Cr.No.106 of 2017 on the file of the SHO, Muvvalavaripalem Police Station, Visakhapatnam, outcome of report of the 2nd respondent/ defacto-complainant taken cognizance for the offence punishable u/sec.307 r/w 34 of IPC, filed the Criminal Petition to quash the proceedings in the above crime.

The contentions in the quash petition are that the registration of the FIR is illegal and without any preliminary enquiry of the factual aspects by record from Hospital authorities, that the defacto-complainant is none other than a third party who is public without knowing the factual aspects and only on apprehension gave a complaint dated 14.03.2017 on which the police shown the night watchmen of hospital as A.1 and parent of the infant as A.2 and the Krishna Hospital Authorities as A.3 in the FIR, that it is mentioned in the complaint that the parents of the female infant are outside the burial ground on 14.03.2017, but in fact the mother i.e. 1st petitioner is unconscious in hospital and taking treatment and she is on the bed since 13.03.2017 at 7.30 a.m.(the date of admission) to till 12.04.2017 at 3.00 P.M. (date of discharge) therefrom it is prima facie showing that the 1st petitioner is taking treatment in hospital by the date and time of the alleged incident and complaint but the police straight away shown the petitioners both as A.2 in the FIR which is

totally defective, that the 1st petitioner at first occasion begot a child and the said child is expired due to less weight. Likewise, second issue the female baby born on 14.03.2017, immediately after the delivery the A.3- hospital authorities informed the baby infant is with less weight and at any time may die within span of minutes and after few hours of this, the petitioners came to know all the incidents happened. Hence prima facie even as per the medical reports, when the petitioners are physically present in the hospital and taking treatment, the question of allegations made in the complaint does not arise. The infant child born on 13.03.2017 as premature seventh month and since then kept NICU observation in the care and custody of the 1st petitioner and baby discharged on 24.05.2017 from Krishan Hospital and the 1st petitioner discharged on 12.04.2017 with the advice of the doctors that infant must be in the care and custody and treatment of the doctors and need breast feed more than three months. The 1st petitioner working as a Government school teacher and the 2nd petitioner working as Government employee but the police mere showing their names in the FIR and harassing and wants to arrest the petitioners even without completing investigation. The 2nd respondent-defacto-complainant after came to know the real facts and on shown the treatment of infant baby by the petitioners expending huge lakhs of rupees and caring the infant by the 1st petitioner and day to day need, he realized and found that due to hurriedly without knowing the real facts mentioned against the parents of infant, in fact, he realized

and also agreed for compromise and hence even as per the Apex Court ruling under Section 307 IPC can be compounded before this Court under Section 482 Cr.P.C. and in view of the available medical record, prima facie the 1st petitioner is totally innocent about the alleged incident, hence the FIR proceedings are liable to be quashed.

The complaint averments in brief are that on 14.03.2017 in the A.U., as the co-employee of the defacto-complainant by name Singampalli Narasingarao expired, to complete his funeral, himself along with the family members of the deceased, his co-employees, Bangaru Apparao, Chenna Nagaraju and some others, went to burial ground, near RTC Depot, Pedawaltair, Visakhapatnma, After completion of cremation and when they are returning they found one male person with an infant in a bag and trying to bury the infant and on suspicion they questioned the person and he replied that he came to bury the infant as the infant died and its parents have been waiting outside the burial ground. On verification they found that the infant female child was alive. Then they informed to the police and on enquiry it was revealed that the person has been working as security guard in Krishna hospital, the female child was born on 13.03.2017 in the hospital to the couple in room No.103. He confessed that on 14.03.2017 at 5.00 p.m. the parents of the female infant had taken him into the room and asked him to bury the infant somewhere and thus he came there to bury the infant.

Heard the learned counsel for the petitioner, so also the learned Public Prosecutor for the 1st respondent and the learned counsel for the 2nd respondent/defacto-complainant and perused the grounds urged in the quash petition, FIR and other material on record.

A perusal of the material referred supra of the crime still under investigation no way requires interference to quash the FIR but for not to arrest unless there is necessity of arrest pending investigation apart from the petitioners seeking to compound at the crime stage by securing defacto-complainant was already dismissed on 04.08.2017. It is made clear that the dismissal order, dt.04.08.2017 no way prejudice any of the available rights of the accused but for after completion of investigation only if any to invoke if there is no material to take cognizance in the event of filing report and otherwise on taking cognizance.

In the result, the Criminal Petition is dismissed. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:05.09.2017
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Dr. B.SIVA SANKARA RAO J,