

**THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CRIMINAL PETITION No.8220 of 2010**

**ORDER:**

The petitioner Nos.1 to 13 are the accused of Cr.No.32 of 2006 of Devarapalli Police Station registered for the offence punishable under Section 307 r/w 34 IPC and Section 21 of the Indian Arms Act on 01.08.2006 which is the outcome of the report of the second respondent-M.Mahalakshmi Naidu.

The police, after investigation, filed the final report in the form of charge sheet by examining as many as 14 witnesses. Undisputedly, from the police final report covered by the investigation, none of the *de facto* complainant or the other members of the prosecution party are injured but for 8 of the accused group were treated by L.W.11 and he issued wound certificate on the even date for the deep laceration of 6 x 3 on the left side of skull, 4 x 2 cm deep laceration on the right side of skull, another deep laceration on the right side of skull with severe body pains and CT scan of brain found normal.

The substance of the police report registered as crime supra and the police final report, outcome of the investigation supra, is that the *de facto* complainant group belonged to Telugu Desam party and the accused group belonged to Congress party and it is in relation to the panchayat elections main contest was between A1 and L.W.1-*de facto* complainant for the post of Sarpanch and the other accused and witnesses of the respective parties and their family members contested as ward members in the said panchayat elections held on 06.08.2006. In that eve, during the

pre-election period the alleged occurrence had taken place on 01.08.2006 at about 10.00 a.m. or 10.30 a.m. and the report was received at 10.00 p.m. Eight members were examined by the Doctor-L.W.11 as per the charge sheet at 11.00 p.m. That A1, to win in the panchayat elections, engaged hired goondas to kill L.Ws.1 and 3 and, accordingly, on 01.08.2006 at about 18.00 hours at four road junction, called as racha banda at Taruva, while L.Ws.1, 3 to 7 and their followers engaged in election canvassing at Taruva, A1 with the assistance of A2 to A13 rushed there in Qualis vehicle of L.W.2, attacked L.Ws.1 and 3 with deadly weapons like big knives, stout sticks and attempted to kill L.Ws.1 and 3 but they escaped from the hands of the accused and the villagers and followers of L.W.3 caught A2 and the remaining accused fled from the scene of offence by allegedly leaving three big knives and five stout sticks and the so-called Qualis vehicle and it is L.W.2 that handed over the alleged knives, stout sticks, the Qualis vehicle and A2 in the police station.

No doubt, it is the basic contention of the learned counsel for the petitioners, seriously and elaborately argued, in seeking to quash the said proceedings of the police final report, taken cognizance as P.R.C.No.3/2007 by the learned Additional Judicial First Class Magistrate, Chodavaram and at that stage before committal there is an interim stay of all further proceedings until further orders passed by this Court on 31.08.2010 in Crl.M.P.No.7577 of 2010 which stay order is in force, that the very report is artificial and it is the accused party that are victims and the *de facto* complainant party that are aggressors of the

occurrence from A2 sustained the injuries and none of the prosecution witnesses sustained any injuries. Had there been any little truth of the alleged attack against L.Ws.1 and 3, they did not even sustain any injuries muchless contusions or abrasions and it is an artificially created false story influencing the police and implicating in the offence for Section 307 IPC with deliberate false version and the vehicle is also managed by L.W.2, their own, so also sticks and knives of their own and by implicating unconnected parties along with A2 because of the political rivalry. Leave about the contra contention of the learned Public Prosecutor in saying that nothing to interfere, undisputedly, part-II CD is not filed. However, from a perusal of the very charge sheet there is no offence under Section 307 IPC that attracts even for the police final report where Section 21 of the Indian Arms Act is deleted though mentioned in the First Information Report and if at all there are any injuries it is only Section 323 IPC or 324 IPC that attract for nothing to implicate them in the offence under Section 307 IPC.

From the expression of the Constitution Bench of the Apex Court in ***Dharmapal v. State of Haryana***<sup>1</sup>, even committal Magistrate under Section 209 Cr.P.C. is also to consider the material for committal to the Court of Sessions for only where it appears from the material of the case is exclusively triable by the Court of Sessions and by virtue of above observation, there is nothing to commit the case to the Court of Sessions for no offence under Section 307 IPC attracts. The learned Magistrate is also to

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<sup>1</sup>(2014) 3 SCC 306

apply his mind by virtue of this order and, if at all retains the case as triable by the learned Magistrate to pass an order else to commit and therefrom to raise all the contentions by the petitioners-accused before the Court of Sessions.

Having regard to the above and with the above observations the Criminal Petition is disposed of. Needless to say in the event of committal if any still of the case to Court of Sessions, by left open to the accused to raise all available and possible contentions before the Court of Sessions at the time of hearing before charges, if necessary, by filing application under Section 227 Cr.P.C., including to file any material on their behalf worth to consider at the pre-charge hearing pursuant to the order of the Honourable Apex Court as held in ***Rukmini Narvekar v. Vijay Sataredkar***<sup>2</sup>. The stay order, dated 31.08.2010 in Crl.M.P.No.7577 of 2010 is vacated and other miscellaneous petitions pending if any shall stand closed.

**Dr. B.SIVA SANKARA RAO J,**

04<sup>th</sup> October, 2017.  
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<sup>2</sup> 2008 (4) JCC 2879