

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1601 OF 2017

ORDER:

Requesting to quash the First Information Report (FIR) in Crime No.13 of 2017, dated 04.01.2017, of Medipally Police Station of erstwhile Ranga Reddy District, the present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973.

2. The petitioners viz., Anirudh Kishore Jaiswal and Gunnagari Dayakar, who are arraigned as accused, alleged to have committed the offence punishable under Section 304 Part - II of the Indian Penal Code, 1860 (IPC).

3. Heard Sri C. Raghu, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

4. The learned counsel for the petitioners would submit that the allegations mentioned in the complaint do not disclose commission of offence punishable under Section 304 Part - II of IPC as there was no physical assault or even touch between the petitioners and the deceased. The learned counsel would submit that the deceased, who is the husband of the *de facto* complainant, respondent No.2 herein, purchased a television from Bajaj Electronics and paid earnest money installment (EMI) for eight (8) months and balance of Rs.2,400/- remained unpaid, for which, the petitioners alleged to have approached him in that connection and asked him to pay the said

balance amount and the deceased fell down; and, when he was taken to Aditya Hospital, he was declared dead. It is, therefore, his submission that no offence has been made out and, therefore, the offence punishable under Section 304 Part - II of IPC cannot be viewed at all, and sought to quash the F.I.R.

5. The learned Additional Public Prosecutor would resist the request. According to him, the petitioners, not only abused the *de facto* complainant previously on telephone and threatened, but also on 04.01.2017, having visited the house of the deceased, abused and threatened him when he asked him to express excuse for abusing him earlier and that the investigation is still in progress and finally, sought time to file opinion of the Medical Officer who conducted post-mortem.

6. After the matter was adjourned for submitting postmortem examination report containing the opinion as to the cause of death, the learned Additional Public Prosecutor has submitted final opinion dated 28.03.2016. It appears that the specimen were collected and sent for chemical analysis, and on receipt of the report, a final opinion was tendered by the Medical Officer of Department of Forensic Medicine, Gandhi Medical College, Secunderabad. The opinion shows that the cause of death to the best of knowledge and belief of the Medical Officer was due to coronary heart disease (a natural cause of death).

7. Now, the question is, whether the said opinion would give a clean chit to the petitioners aiding to quash the First Information Report. It is true, the complaint does not contain any assault, but what has transpired at the relevant time also requires due importance. The complaint averments would show that on 04.01.2006 at 11.00 a.m., the petitioners visited their house and asked for payment of balance amount relating to last two installments, on which her husband questioned them to tell him as to who did abuse him over phone and also asked them to get the person who abused him to seek excuse, on which, the petitioners uttering whether he wants them to abuse him or beat him and then hurling abuses threatened him that they would see the end of the *de facto* complainant and her husband putting them under fear of threat and her husband unable to bear with it, he fell down and when he was immediately taken to Aditya Hospitals, the doctors having examined him declared dead. Whether really a blow is required to be dealt with on the person so as to clutch the penal offence under Section 304 Part-II of IPC or whether putting a person under instant fear of death would suffice to clutch the offence under Section 304 Part-II requires a probe at later stage, which the Investigating Agency has to examine basing on the evidences that would be collected and forming an opinion to file final report. In such an event, certainly, the request of the petitioners cannot be acceded to.

Therefore, the Criminal Petition is dismissed at the admission stage itself holding that it is not a case to quash the proceedings.

However, it is open to the petitioners to agitate the same at the stage of framing charges.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 10, 2017.
PV/Mgr

