

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10690 of 2017

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioners /A.1 to A.3 to quash the proceedings in S.T.C.No.192 of 2016 on the file of Judicial Magistrate of First Class, Mahabubnagar, registered for the offences punishable under Sections 323 and 504 read with 34 IPC.

2. Heard.

3. Learned counsel for the petitioners/A.1 to A.3 submits that petitioner No.3/A.3 is aged about 15 years only, but in the charge his age was mentioned as 20 years and the entire family was roped into the crime for different reasons. He further contended that petitioner No.1 is a Government Teacher in Primary School, Eppatur Mandal, Nawabpet, Mahabubnagar District, and on the date of incident, he was on duty and in proof of the same, he filed Attendance Certificate, issued by the Head Master of the said school. He further submits that the petitioners are residents of B.K.Reddy Colony, Seshadri Nagar, Mahabubnagar, whereas the offence took place at a different place. Therefore, the allegations made in the charge sheet against the petitioners are improbable and requested the Court to quash the proceedings.

4. The *de facto* complainant lodged a complaint alleging that petitioners voluntarily beat the *de facto* complainant with hands, kicked with legs and abused him in filthy language. Therefore, the police registered the aforesaid crime against the petitioners and after completion of investigation, the police filed charge sheet against them.

5. During investigation, the Investigating Agency recorded the statement of witnesses under Section 161 Cr.P.C. The said statements recorded by the police *prima facie*, is not substantive evidence, however, the grounds urged before this Court are to be looked into at this stage.

6. Learned counsel for the petitioners submits that petitioner No.3 is aged about 15 years, but in the charge sheet his age was mentioned as 20 years. This fact is not substantiated by any material. Learned counsel for the petitioners produced *Bona fide* and Conduct Certificate issued by Sri Saraswathi Shishumandir, Sharadanagar, Mahabubnagar, wherein it is mentioned that petitioner No.3 was born on 01.01.2002, whereas the offence allegedly took place in the month of June, 2016. Therefore, by the date of commission of offence, petitioner No.3 was aged about 14 years. This Court, while exercising power under Section 482 Cr.P.C., cannot decide, whether petitioner No.3 is a juvenile. Therefore, it is for the Court below to enquire into the matter and find out whether the petitioner No.3 is a juvenile as on the date of commission of offence in terms of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and take necessary action to separate the case against petitioner No.3 and try the same against petitioners 1 and 2 only for the above referred offence, while referring the case against petitioner No.3 to the competent Juvenile Justice Board to try, enquire and decide the matter if found that petitioner No.3 is juvenile. These are disputed questions of fact, which cannot be decided while by exercising the power under Section 482 Cr.P.C.

7. The second ground urged before this Court is that petitioner No.1 was on duty as on the date of incident and he also produced Attendance Certificate issued by the Head Master of the school, in proof the same. But, the *alibi* though relevant under Section 11 of the Indian Evidence Act, it is a question of fact to be decided during trial. Therefore, the plea of petitioner No.1 that he was not present on the date of incident is not a ground to quash the proceedings against him.

8. The third ground urged before this Court is that the petitioners are residents of B.K.Reddy Colony, whereas the complainant is a resident of Yekalavya Colony, therefore, the question of commission of such offence does not arise. But, such question cannot be decided while exercising the power under Section 482 Cr.P.C., since the Court is required to verify the allegations made in the charge sheet. The allegations in the charge sheet are taken into consideration on its face value, the petitioners have committed the offences punishable under section 323 and 504 IPC. Therefore, I find no ground to quash the proceedings against the petitioners at this stage.

9. With the above direction, the Criminal Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

NOVEMBER 15, 2017

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Date: 15.11.2017

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