

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**Crl.P.No.11731 of 2017**

**ORDER**

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.361 of 2017, pending on the file of Judicial Magistrate of First Class, Korutla, for the offences punishable under Sections 290 and 324 read with 34 IPC.

2. The 2<sup>nd</sup> respondent lodged a report on 22.07.2017 at about 10.00 hours with the police alleging that he is a resident of Thandrial Village of Kathalapur Mandal and working in Vasundhara Selections Cloth Show Room belongs to one Gujjeti Venkatesh S/o Venkatrajam aged 45 years, Padmashali R/o Thandial Village at Korutla proper. One Pallikonda Prakash, borrowed some amount from his cloth shop owner, the owner of the 2<sup>nd</sup> respondent sent him to collect the said amount. On 21.07.2017, at about 1100 hours, when the 2<sup>nd</sup> respondent went there and demanded payment of the debt, the 1<sup>st</sup> petitioner refused to pay the same and abused him in most filthy language and fisted him. Later, the 2<sup>nd</sup> petitioner, who is son of the 1<sup>st</sup> petitioner also joined him and they beat him with hands and caused bleeding injuries. Then the 2<sup>nd</sup> respondent went to the hospital for treatment and thereby there is a delay in reporting the incident to the police.

3. The first and foremost contention raised before this Court is that the offence punishable under Section 290 IPC is non cognizable and the 1<sup>st</sup> respondent took up investigation and filed charge sheet. The second ground urged before this Court is that the petitioners did not use any substance or instrument for causing injury, which is likely to cause death in ordinary course. The overtacts attributed to the petitioners would not attract the offence punishable under Section 324 IPC. Placing reliance in

**Guguloth Jagan v State of Telangana and another**<sup>1</sup> proceedings in C.C. were sought to be quashed.

4. Learned counsel for the petitioners submitted that Section 290 IPC is not cognizable offence and the police cannot investigate into and file charge sheet and drawn the attention of this Court to Sub section 2 to Section 155 Cr.P.C., which prohibits the police from investigating into the non cognizable offence, without the permission of the Magistrate having jurisdiction . But Sub section 4 of Section 155 Cr.P.C is an exception, which contemplates the procedure to be followed where one of the offences is non cognizable and other offences are cognizable. According to Sub section 4 of Section 155 where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non cognizable. Therefore, the contention that the police has no jurisdiction to investigate into the offence punishable under Section 290 IPC when the other offence punishable under Section 324 read with 34 IPC is cognizable, and thereby, the police lacks jurisdiction to investigate into the offence punishable under Section 290 IPC., and that the entire charge sheet be quashed cannot be accepted. Therefore, the first ground fails.

5. The second ground urged by learned counsel for the petitioners is that when no substance or instrument is used in causing hurt and when the doctor opined that the injuries are simple in nature, the charge for the offence punishable under Section 324 IPC cannot be sustained and the trial against the petitioner cannot be proceeded also cannot be accepted, for the reason that Section 324 IPC deal with punishment for voluntarily causing hurt by dangerous weapons or means. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or

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<sup>1</sup> (2015)2 ALT (CrI.) 294 (A.P.)

by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

6. No doubt, in the present case, the petitioners did not use any instrument of shooting, stabbing or cutting etc, but fisted with hands. Whether the hand is an instrument or not to cause injury is a question to be decided. Therefore, on the ground that no substance or instrument is used for causing hurt voluntarily on the body of the 2<sup>nd</sup> respondent, it is difficult to record a specific finding that the overtacts attributed to the petitioners would not attract the offence punishable under Section 324 IPC. Even in **Guguloth Jagan** referred supra this Court held that when no instrument or substance as referred in Section 324 IPC is used for causing hurt voluntarily, it would not fall Section 324 IPC. But in hypothetical situation if a person caused a serious hurt with hands without any substance or instrument referred in Section 324 IPC caused grievous injuries and some time it may lead to death of a person or fractures, if the principle laid down in the above judgment is applied to such case, it is difficult to sustain the charge of Section 324 IPC.

7. Section 216 Cr.P.C. permits the Court to alter or add any charge at any time before judgment is pronounced. If for any reason, this Court recorded a finding without trial that the alleged act done by the petitioners would attract an offence punishable under Section 323, it amounts to exercise of power under Section 216 Cr.P.C. while exercising power under Section 482 Cr.P.C. In fact, in the Judgment of the Apex Court in **Umesh Kumar v State of Andhra Pradesh**<sup>2</sup> it was held that while deciding application under Section 482 Cr.P.C., the Court cannot express its final opinion whether the facts would attract a particular offence. If such

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<sup>2</sup> AIR 2014 SC 1106

opinion is expressed, the power conferred on the trial Court under Section 216 Cr.P.C, would become redundant or otiose and thus, this Court cannot express its opinion whether the allegations made in the charge sheet would attract a particular offence before recording evidence by the Court below. Hence, I find no substance in both the grounds urged before this Court to exercise inherent power under Section 482 Cr.P.C. to quash the proceedings and consequently, the criminal petition is liable to be dismissed.

8. Accordingly, the criminal petition is dismissed at the stage of admission. However, the petitioners are at liberty to raise such plea before the trial Court.

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

29<sup>th</sup> November, 2017  
kvrm

**M. SATYANARAYANA MURTHY, J**

