

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.1808 & 1809 of 2011

COMMON ORDER:

Criminal Petition Nos.1808 and 1809 of 2011 are filed by the *defacto* complainant aggrieved by the common order dated 29.10.2010 in Crl.R.P.Nos.12 and 13 of 2010 respectively passed by learned Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, dismissing both the Crl.R.Ps. by confirming the orders in Crl.M.P.Nos.6925 and 8095 of 2009 passed by X Metropolitan Magistrate, Cyberabad at Malkajgiri, dismissing both the petitions filed by the prosecution.

2) It should be noted Crl.M.P.No.6925 of 2009 was filed by the prosecution under Section 323 Cr.P.C. praying the Court to commit the case to the Court of Sessions for trial, whereas Crl.M.P.No.8095 of 2009 was filed by the State in the form of protest petition under Sections 190, 200 r/w 190(1)(c) Cr.P.C. to include Sections 120B, 144, 148, 307, 324, 347, 380, 385, 427,422 r/w 34 IPC and Section 24B of Arms Act in the criminal case.

3) As stated supra, both the petitions were dismissed by the learned Magistrate and confirmed by the Additional Metropolitan Sessions, Cyberabad at LB Nagar.

4) Heard arguments of Sri B.Franky Roy (Party-in-person) and learned Additional Public Prosecutor (Telangana) for 1st respondent.

Notice sent to Respondent Nos.2 to 5 returned with the endorsement ‘*unclaimed*’. Hence, service of notice to R2 to R5 is presumed following the decision reported in *C.C.Alavihaji v. Palapetty Muhammed and another*¹².

5) At the outset, it must be said that I find no illegality or perversity or irregularity in the orders passed by the Courts below.

6) The complainant is an advocate said to be running school in the name and style “Holy Marry Grammar School” in Laxminagar behind Simhapuri Colony, Nagaram Mandal, R.R.District. In Ex.P1—complainant his version is that on 09.06.2003 at about 11.30 AM, one Ramana and Satyavathi and their group i.e., three gents and three ladies came to his school and attacked him and snatched away his money of Rs.2,850/- from his purse and assaulted him with sticks and hands, kicked him with legs and injured him severely on his chest, head, stomach, thighs and private parts and tortured him for more than three hours and also beat one Ravinder when he tried to rescue him and they threatened him with knives to kill him if the matter was taken to police. After investigation the police of Keesara filed charge sheet for the offences under Sections 448, 385 and 506 IPC and the same was taken cognizance by learned Magistrate. During the course of trial, PWs.1 to 3 were examined and Exs.P1 to P4 were marked. At this stage, the prosecution came up with the above two petitions. Both the trial Court and Additional Sessions Court dismissed the petitions on the main

¹ (2007) 6 SCC 555

observation that PW1 during the course of his evidence made an improved version to the effect that all the accused along with others attacked him with deadly weapons like sticks, iron pipes, knives and sickle and caused injuries all over his body with pre-arranged plan by trespassing into school premises which was run by PW1. The Courts below observed that there was remarkable variation and improvement between evidence of PW1 and his version at the earliest point of time i.e. in Ex.P1 and his 161 Cr.P.C. statement wherein he did not mention about the accused allegedly causing injuries with deadly weapons with an intention to kill him. Both the Courts further observed that PW1 who is a practicing advocate, ought to have mentioned to the police at the earliest point of time all the facts which he stated in his evidence. However, Ex.P1 is totally silent on material facts which he stated in his evidence. Therefore, the material facts spoken in the evidence of PW1 relating to offence under Section 307 IPC and other offences were material omissions when compared with his earliest version. Hence, petitions cannot be allowed. The Courts below further observed PW2 who is another injured did not support the case of prosecution and he was declared hostile and during the course of cross-examination of Addl.P.P., he denied his 161 Cr.P.C. statement recorded by police during the course of investigation. Therefore, the Courts below held, there was no corroboration for the evidence of PW1. The Courts below also observed that PW3—the doctor who examined PWs.1 and 2 stated that the injuries found on PWs.1 and 2 were simple in nature. Above all,

the police have not seized any material objects allegedly used by the accused to attack PWs.1 and 2 and to kill them to buttress the case of prosecution. The Courts also observed that the prosecution, particularly the defacto complainant, kept silent without filing any protest petition when police filed charge sheet under Sections 324, 448 and 506 IPC and it is only at the fag end of the trial they have come up with such objections. On all the aforesaid observations, the Courts below declined to allow the petitions filed by the prosecution.

7) I gave my anxious consideration to the impugned orders. As rightly observed in those orders, the complainant being an advocate, who knows pretty well the law, ought to have at the earliest point of time, narrated in complaint about the ghastly acts allegedly committed by the accused and their using deadly weapons to kill him. In Ex.P1—complainant and in his 161 Cr.P.C. statement his version was quite different from the narration made by him during his evidence. Therefore, the Courts below were constrained to hold that he made costly omissions at the earliest point of time and made improvements during the course of evidence which cannot be taken into consideration to commit the case to Sessions Court. Added to it, except lone version of PW1, there was no corroboration from PW2 who did not support prosecution case. Further, the police did not seize any crime weapons and above all, the injuries found on the bodies of PWs.1 and 2 were only simple in nature. Taking holistic picture, it can only be held that the petitions are untenable.

8) Accordingly, both the Criminal Petitions are dismissed by confirming the respective orders passed by the Courts below.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 15.11.2018
Murthy

