

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3758 of 2018

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C, to quash the proceedings against him in CC No. 68 of 2017 on the file of Special Magistrate, Nuzivid, which was registered for the offences under Sections 341, 323 and 506 IPC.

2. The brief facts of the case are that the annual ceremony of complainant's mother held on 17.1.2016 in his native Village and thereafter, on the night 23.1.2016 hours when the de-facto complainant and his cousin brother (LW-2) were proceeding towards Basha Tailoring Shop in Hanuman Junction at about 8.30 PM to pay amount to the caterer, at that time, the accused, who is the nephew of the de-facto complainant approached him and abused him in filthy language on the ground that he insulted the accused by not inviting him to the annual ceremony while inviting his wife whom he estranged. He also assaulted him and beat him indiscriminately. LW-2 tried to rescue the de-facto complainant.

3. Refuting the complaint allegations, learned counsel for petitioner would submit that there are disputes between the petitioner and his sister

one Dr. Gundapaneni Vishnu Priya, and in fact, she filed a civil suit O.S.No. 93 of 2016 on the file of XV Additional District Judge, Nuzvid against the petitioner/accused and some others for partition of the family properties and the said suit is pending and the petitioner/accused is contesting the said suit. In order to bow him down, his sister with the connivance of the de-facto complainant, who is none other than their maternal uncle, foisted a false case, which is evident from FIR allegations, wherein it is already mentioned that there were property disputes between Dr. Gundapaneni Vishnu Priya and accused. Therefore, the present case has to be viewed in the back drop of civil dispute between the petitioner and his sister. Learned counsel would further argue that the incident was allegedly occurred on the night of 23.1.2016 at about 8.00 PM, whereas the FIR was lodged belatedly on the night of 24.1.2016 at about 21.30 hours, which shows that a false report was filed after taking long time. For all these submissions, learned counsel would submit that the complaint is a motivated one to take vengeance against the accused and there is no truth in it and therefore, the CC may be quashed.

4. Learned Additional Public Prosecutor opposed the petition stating that the FIR was investigated and after finding prima facie case against

the accused, charge sheet was laid, which was taken cognizance by the trial Court, registered it as CC and therefore, it is preposterous for petitioner to content that there is no case at all.

5. The graveman of the accusation is that on the night of 23.1.2016 when the de-facto complainant and his cousin (LW-2) were proceeding to Hanuman Junction to pay amount to the caterer, the accused appeared there and abused the de-facto complainant for not inviting him to his mother's ceremony and inviting his wife whom he left some time ago and thereby he insulted him and assaulted him and beat him indiscriminately.

6. In this regard, we have to see whether there is any prima facie case made out by the prosecution. In the memo of evidence appended to the charge sheet, apart from LW-1, LWs 2 to 5 are shown as eye witnesses to the incident. As per FIR, LW-2 went along with the de-facto complainant and witnessed the incident and intervened and rescued the de-facto complainant from the hands of the accused.

7. A perusal of 161 Cr.P.C statement of LW-2 would reveal that he supports the contention of LW-1 (the complainant) and he stated that the accused appeared before them on the night of 23.1.2016 and abused the de-facto complainant and assaulted him and he (LW-2) intervened and rescued the de-facto complainant. Similarly LW-3- K.Ram Mohana Rao,

who is said to be another eye witness also stated in similar lines. So also, LW-4-Shaik Bhasha stated about the galata and the accused making an assault on the de-facto complainant.

8. Therefore, a plain reading of the FIR and the statements filed along with the charge sheet would show a prima facie accusation against the de-facto complainant. Of course, the veracity of their statements has to be determined only after a full-fledged trial but not at this stage. It is true that from the copy of the plaint in O.S.No. 93 of 2016, it would appear that there are property disputes between one Dr. Gundapaneni Vishnu Priya and the accused and his brothers. However, whether the present criminal case is an offshoot of civil disputes or not is a question to be determined again after full-fledged trial, but this Court at this stage, cannot presume that the CC is an offshoot of the civil disputes. At the outset, in view of the existence of the prima facie case, the proceedings in CC cannot be quashed.

9. Learned counsel for petitioner relied upon the decision in **State of Haryana vs. Ch.Bhajanlal**¹. However, none of the conditions mentioned therein would attract in the instant case so as to exercise the plenary powers of this Court under Section 482 Cr.P.C to quash the proceedings.

¹ 1992 AIR 604

10. As already stated, there is a prima facie accusation and the veracity of the allegations has to be decided only after trial.

11. Having regard to it, the Criminal Petition is dismissed. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

Date: 03.04.2018
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U.DURGA PRASAD RAO, J

