

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15769 of 2014

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in P.R.C.No.11 of 2014 on the file of the Judicial First Class Magistrate, Alamuru, East Godavari District, registered for the offences punishable under Sections 498-A, 354, 323 read with Section 34 IPC, on the sole ground that the other accused, who were tried for the same offences, were found not guilty and acquitted vide judgment dated 15.05.2015 in S.C.No.49 of 2015 on the file of the Assistant Sessions Judge, Ramachandrapuram.

2. The main contention of the petitioner is that during trial, both the victims have turned hostile and did not state anything against the accused and they also denied about lodging of the report to the police and therefore, he requested to quash the proceedings against him.

3. During hearing, learned counsel for petitioner has drawn the attention of this Court to the judgment dated 15.05.2015 passed in S.C.No.49 of 2015 and the depositions of P.Ws.1 and 2 and also other witnesses and that on the basis of the evidence recorded by the Sessions Court in the said judgment, he requested this Court to quash the proceedings against the petitioner for the offences referred supra as the other accused were found not guilty and acquitted for the same offences.

4. Though the second respondent-de-facto complainant was served with notice, none appeared on her behalf.

5. Learned Public Prosecutor opposed the petition on the ground that the case of petitioner is not on the same lines of the other accused and therefore, the proceedings against him cannot be quashed and requested to dismiss the petition.

6. The main allegation against the petitioner is that on 29.06.2009 at about 7.30 PM., when the de-facto complainant and her younger sister were at their house, her husband i.e, A1 along with A2 to A8 came to the house and A1 abused her in filthy language saying that she did not bring sufficient dowry, caught hold of her hair and when her sister Ushasri obstructed him, he caught hold of her hair, forcibly took both of them to the house of Kusuma Kondaiah, pushed them on ground and kicked with legs by abusing in filthy language. In the meanwhile, A1 placed his hand on the chest of de-facto complainant and thigh, outraged her modesty and thus, the petitioner and others have committed the offences referred supra. On the strength of the complaint, the Sub-Inspector of police took up investigation and examined as many as eight witnesses and recorded their statements under Section 161 of Cr.P.C., and filed charge sheet, having come to conclusion that there is a *prima facie* evidence against the petitioner and other accused.

7. The petitioner is none other than the husband of the de-facto complainant and the specific overt act attributed against him is that he caught hold of the hair of de-facto complainant and her sister and

forcibly took them to the house of Kusuma Kondaiah by abusing in filthy language. The other specific allegation made against him is that he placed his hands on her chest and tried to outrage her modesty, for which the Sessions Court found not guilty of the accused in S.C.No.49 of 2015. Therefore, the allegations made against the petitioner being husband of the de-facto complainant may attract the offences punishable under Sections 498-A, 323, 506 read with Section 34 IPC, but not under Section 354 IPC. Curiously, the Investigating Officer filed charge sheet against A1 only for the offences punishable under Sections 354 read with Section 34 IPC, but not under Section 498-A IPC. The only allegation made against the petitioner at best attracts the offences punishable under Sections 323, 506 read with Section 34 IPC, but not under Section 354 IPC.

8. Since the petitioner did not appear before the Magistrate at PRC stage, the case against him was separated and other accused were proceeded with trial in S.C.No.49 of 2015. During trial, P.Ws 1 to 6 were examined and Exs.P1 to P12 were marked, upon hearing argument of Public Prosecutor for the state and the defence counsel, the Sessions Judge found the accused not guilty of the alleged offences as none of the witnesses supported the case of the prosecution. When the other accused including the accused against whom the charge for the offence under Section 354 IPC was framed, this petitioner against whom the allegations made attracting the offences under Sections 323, 506 read with Section 34 IPC is also liable to be acquitted.

9. Adverting to the evidence of P.W.1, based on record, she totally denied the very commission of offence and also lodging of report with the police and she turned hostile. Though the Public Prosecutor obtained permission to cross-examine, nothing was elicited. Similarly, P.W.2, another victim, also did not state anything to establish the guilt of the accused for the various offences and she turned hostile and the Sessions Judge acquitted the other accused for various offences. Therefore, continuation of proceedings against the petitioner/A1 is nothing but a futile exercise as there is no possibility of convicting him for the said offences even if the trial is undertaken by the Sessions Court and as such the petitioner is entitled for acquittal in terms of the judgment in S.C.No.49 of 2015.

10. In the result, the Criminal Petition is allowed, quashing the proceedings in P.R.C.No.11 of 2014 on the file of the Judicial First Class Magistrate, Alamuru, East Godavari District, against the petitioner/A1. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

10th August, 2018

Note:

Issue CC by 27.08.2018

sj