

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.17438 OF 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to quash the proceedings in FIR No.85 of 2018 of Palakoderu Police Station, West Godavari District, registered for the offences punishable under Sections 341, 323, 506 and 34 IPC.

The 7th respondent/*de facto* complainant lodged report with the police on 29.03.2018 alleging that his sister Kolli Tejaswani lodged report with police, Kalla Police Station that she was subjected to harassment for her failure to meet the illegal demand of payment of dowry etc. While so on 29.03.2018 at about 02.00 PM, his sister along with Dola Lokeshwara Rao started from Gollala Koderu Centre by walk and proceeding towards her house, Kolli Ramu/2nd petitioner, Jammu Tata Rao/3rd petitioner and Kolli Murali Krishna/1st petitioner restrained them from moving in any direction and beat them with hands and kicked with legs while threatening to kill. Immediately, his sister was shifted to Juvvalapalem and there she was treated by local doctor and that later she approached the police and lodged report.

The first and foremost contention of the petitioners is that civil dispute is given criminal colour and the 1st and 3rd petitioners were confined illegally in the police station and the police forced to produce the child of the 2nd petitioner and Tejaswani before them through constable Raghu and that the dispute the purely matrimonial and at best, Tejaswani can file appropriate application before the Court for custody of the child, but lodged report by abuse of process of the Court to bring to their term to settle the case and prayed to quash the proceedings.

During hearing, learned counsel for the petitioners reiterated the contentions raised in the petition.

The jurisdiction of this Court is limited under Article 226 of the Constitution of India. In the complaint lodged with the police by the 7th respondent a specific allegation is made that he along with his sister and another person Dola Lokeshwara Rao were proceeding from Gollala Koderu Village by foot and in the meanwhile they were restrained by three persons and kicked them with legs and caused injuries over the body of Tejaswani and threatened with dire consequences. These allegations if taken at their face value constitute offence punishable under the above sections of law. When the allegations made in the complaint are specific and constitute offence, this Court cannot normally exercise jurisdiction under Article 226 of the Constitution of India since it amounts stifle legitimate prosecution.

The main contention is that the civil dispute is converted into criminal. This contention is not acceptable as causing injuries on the body of Tejaswani and kicking with legs is purely criminal nature and the question of giving flavour of criminal offence for the civil wrong does not arise.

The other contention is that Tejaswani has to approach the competent Court for custody of the child, but it is not the issue in the subject matter of Crime No.85 of 2018 and so also the alleged illegal confinement of the petitioners in the police station. If the petitioners are aggrieved by the action of the police, the remedy is otherwise, but not in the present petition. While deciding the petition to quash the crime, this Court cannot decide the legality of the alleged illegal confinement of the petitioners.

In any view of the matter, the investigation in the case is not yet commenced and this Court would normally cannot exercise extraordinary jurisdiction under Article 226 of the Constitution of India to stifle the legitimate prosecution when the facts are incomplete and hazy before the Court since the petitioners did not point out any illegality except raising those contentions and false implication of the petitioners. Therefore, I find

that it is not a fit case to quash the proceedings. However, the Investigating Officer concerned is directed to follow the procedure contemplated under Section 41-A Cr.P.C. and the guidelines issued by the Apex Court in **Arnesh Kumar v. State of Bihar**¹, otherwise it would amount to contempt.

With the above observation the writ petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

03.07.2018
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¹ (2014) 8 SCC 273