

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6635 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioners-accused Nos. 2 and 3 to quash the proceedings against them in C.C.No. 17 of 2018 on the file of the Court of VIII Additional Chief Metropolitan Magistrate at Hyderabad (for short, 'the Court below'), registered for the offences punishable under Sections 323, 341 and 506 read with Section 34 of IPC.

2. Respondent No. 3 lodged a report with Station House Officer, Moghalpura Police Station, alleging that on 16-07-2017, he along with his family members came to his father's birth place *i.e.* opposite to Muthyalamma Temple, Sudha Talkies, to celebrate Bonalu festival; that they and the petitioners and other accused all are related to each other; that while thus, the petitioners and accused No. 1 stopped him and told his brother Akhil Yadav not to enter the house by using filthy language and beat his brother with their hands and that they pulled gold chain from the neck of his brother and threatened him with dire consequences. On the strength of the report, a case in crime No. 90 of 2017 is registered, issued F.I.R. and took up investigation. During investigation, five witnesses are examined and their statements are recorded under Section 161 (3) of Cr.P.C. After completion of investigation, having concluded that there is *prima facie* material to proceed against the petitioners and other accused, charge sheet has been filed before the Court below for the offences referred *supra*.

3. The present petition is filed to quash the proceedings against the petitioners on the grounds that the petitioners earlier lodged a report against

respondent No. 3 which is the subject matter of crime No. 89 of 2017 of Moghalpura Police Station, registered for the offences punishable under Sections 341, 506 and 509 of IPC and the present case came to be filed only as a counterblast to the earlier case filed by the petitioners to wreak vengeance against them and that the allegations made in the charge sheet including the statements recorded by police do not constitute commission of any offence much less the above offences.

4. Notice is ordered before admission and proof of service has been filed but none appeared on behalf of respondent No. 3.

5. At the hearing, learned counsel for the petitioners, while reiterating the grounds urged in the petition, has drawn the attention of this Court to the contradictions in the statements of respondent No. 3 and L.Ws.2 and 3 recorded under Section 161 (3) of Cr.P.C. during investigation and taking advantage of the same, it is contended that the incident cannot be accepted.

6. Insofar as the ground that there are discrepancies in the statements of respondent No. 3 and L.Ws. 2 and 3 is concerned, while exercising power under Section 482 of Cr.P.C., this Court cannot appreciate the evidence and at best, it can evaluate the material on record to come to its conclusion. In fact, the statements recorded under Section 161 (3) of Cr.P.C. are not substantive piece of evidence and those statements can be used for limited purpose of contradicting witnesses based on previous statements under Section 145 of Indian Evidence Act. Therefore, at this stage, it is difficult to exercise power under Section 482 of Cr.P.C. and quash the proceedings on the above ground.

7. The other ground that the present crime came to be registered only as a counterblast to the earlier crime got registered by the petitioners is no more a

ground to quash the proceedings since a bare reading of the material available on record, it disclosed commission of cognizable offences even if accepted the allegations made in the charge sheet and other material produced along with the charge sheet as true. In such case, this Court cannot exercise power under Section 482 of Cr.P.C.

8. For the aforementioned reasons, I find no ground to quash the proceedings at this stage and consequently, the petition is liable to be dismissed. At this stage, learned counsel for the petitioners has requested this Court to dispense with appearance of the petitioners before the Court below. This Court in a petition of the present nature cannot issue such direction. However, liberty is given to the petitioners to file application under Rule 37 of Criminal Rules of Practice before the Court below and on filing such application, the Court below is directed to dispose of the same within a week in accordance with law.

9. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 13-08-2018.

M.SATYANARAYANA MURTHY, J.

Note:

Issue C.C. in three days.

B/O

JSK