

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.12962 OF 2010

ORDER:

This petition is filed, by the petitioner, who is A1, seeking for quash of the proceedings against him in S.C.No.265 of 2008 on the file of the court of I Additional Assistant Sessions judge, Warangal. The offences alleged are under Sections 494, 497, 498A, 307 IPC and Section 25(1) of the Arms Act.

2. Heard the counsel for the petitioner and the Public Prosecutor appearing for the 1st respondent as well as the counsel for the 2nd respondent.

3. The counsel for the petitioner importantly seeks for quash of the proceedings so far as offence under Section 307 IPC is concerned, with the help of the ruling of the apex court reported in OM PRAKASH VS. STATE OF PUNJAB¹, wherein the court held that in cases of attempt to commit murder by fire arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect, the offence under Section 307 IPC is made.

4. In this case, the facts show that the petitioner went to the house of the complainant and when the complainant opened the

¹ AIR 1961 SC 1782

door he put his service revolver pointing to her head. The facts, as reflected in the complaint, would show that except pointing out revolver, the petitioner did not commit any last act which would fall in the category of attempt to commit murder.

5. Hence, so far as the offence under Section 307 IPC is concerned, the proceedings need to be quashed.

6. With regard to the maintainability, the counsel for the 2nd respondent submits that the petitioner has filed discharge petition in the lower court, which was dismissed, against which a revision was preferred and the same was also dismissed. Hence, this petition is not maintainable.

7. In answer to the same, the counsel for the petitioner relies on a ruling of the apex court reported in *JITENDER KUMAR JAIN VS. STATE OF DELHI*², wherein it was held that the petition filed under Section 482 against the revisional order of the District Judge dismissing the revision petition should not have been dismissed by the high court merely because in such a case a second revision petition before the high court did not lie. It was further held that it was otherwise open to High Court not to interfere in the matter when examining the case under Sections 482 CrPC.

8. With regard to quash of the proceedings pertaining to the offence under Section 25(1) of the Arms Act is concerned, the complaint does not disclose that the petitioner had a licence

² (1998) 8 SCC 770

for holding the revolver. Hence, that is a matter of issue of fact, which have to be decided by the lower court after trial.

9. With the above observations, the Criminal Petition is partly allowed quashing the proceedings in S.C.No.265 of 2008 on the file of the court of I Additional Assistant Sessions judge, Warangal, so far as the offence under Section 307 IPC is concerned and the proceedings against the petitioner, insofar as other offences are concerned, shall go on.

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

December 3, 2018
LMV



T.RAJANI, J