

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 8501 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-accused No. 2 to quash the proceedings against him in C.C.No. 416 of 2018 on the file of the Court of IV Additional Junior Civil Judge, Guntur (for short, 'the Court below'), registered for the offence punishable under Section 379 read with Section 411 of IPC.

2. Respondent No. 2 lodged a written report with police alleging that on 02-06-2018 at 10 a.m., he along with his wife went to KIMS Hospital, Gunturvarthota, Guntur, on his Hero Honda motorcycle bearing No. AP 07 BH 1481 worth of Rs.50,000/-; that after parking the motorcycle in front of the hospital, they went inside and that after treatment, he came to the parking place and found missing of his motorcycle. On the strength of the report, the police registered a case in crime No. 167 of 2018 of Kothapet Police Station, Guntur Urban, issued F.I.R. and took up investigation. During investigation, the police examined L.Ws.1 to 6 and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of evidence collected during investigation including recovery of motorcycle from the possession of the accused, charge sheet was filed before the Court below for the offence referred *supra*.

3. The main contention raised by learned counsel for the petitioner before this Court is that by the date of the alleged incident, the petitioner was in police custody as he was illegally detained by the police on 25-05-2018 and therefore question of commission of theft of motorcycle on 02-06-2018 does not arise. To substantiate his contention, learned counsel for the petitioner has drawn the attention of this Court to remand report in crime No. 145 of 2018 of Kothapet

Police Station, Guntur, and order passed by a Division Bench of this Court in W.P.No. 19745 of 2018 dated 19-06-2018.

4. Even according to the allegations made in the remand report in crime No. 145 of 2018, the petitioner was arrested on 13-06-2018 but not on 25-05-2018 as contended by learned counsel for the petitioner. Though the petitioner filed W.P.No. 19745 of 2018 for the relief of *habeas corpus*, the Division Bench of this Court did not accept the same since the issue as to whether the police kept the petitioner in illegal custody needs to be adjudicated based on the evidence to be adduced by both parties. In such case, based on either remand report or order in the Writ Petition, it is difficult to accept the contention of learned counsel for the petitioner that the petitioner was in illegal custody of the police by the date of the alleged commission of offence *i.e.* on 02-06-2018. In the absence of any material to substantiate this contention, I am unable to quash the proceedings by exercising power under Section 482 of Cr.P.C. Consequently, the petition is liable to be dismissed.

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

Date: 13-08-2018.
JSK

M.SATYANARAYANA MURTHY, J.