

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 8746 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. 4 and 5 to quash the proceedings against them in crime No. 146 of 2018 of Nirmal Town Police Station, Nirmal District, registered for the offences punishable under Sections 448, 290, 323, 506 and 509 of IPC.

2. Gandrath Sulakshana-respondent No. 2 filed a private complaint on the file of the Court of Additional Judicial I Class Magistrate at Nirmal (for short, 'the Court below') against the petitioners and three others alleging that number of times, she visited the house of the petitioners and when requested to take steps to return the passport of minor child, the petitioners abused her, beat her and threatened to kill her if she again and again visits their house; that thereupon, she lodged a written report with Raidurgam Police Station, Hyderabad, against the petitioners but the police did not register her report; that while so, on 20-05-2018 at about 2 p.m., the petitioners and accused Nos. 1 to 3 visited her house and quarreled with her by stating that as to why she lodged report with Raidurgam Police and demanded her to withdraw the same; that when she refused for the same, the petitioners and accused Nos. 1 to 3 started to abuse her in filthy language and when she requested them not to abuse her, all of them suddenly attacked on her and started to beat her with their hands and legs; that accused No. 4 intentionally caught hold of her saree and tried to remove it and when L.Ws.1 and 2 tried to interfere, the accused also abused and beat them; that when she raised hue and cry, the witnesses who were present at that time intervened and rescued her from the clutches of the accused; that all the

accused threatened her and L.Ws.1 and 2 that they will murder her at any time if she will not withdraw her report and that accused No. 4 with intention to outrage her modesty and to damage her privacy before public who gathered at that time pulled her saree and tried to remove it. The Court below by exercising power under Section 156 (3) of Cr.P.C. referred the complaint to police concerned. On receipt of reference, the police registered the above crime for the offences referred *supra*, issued F.I.R. and took up investigation.

3. At the hearing, learned counsel for the petitioners has contended that when no crime was registered by Raidurgam Police against the petitioners on the report lodged by respondent No. 2, question of demanding respondent No. 2 to withdraw the same does not arise. He has also contended that petitioner No. 1 was at Hyderabad and not at Nirmal on the specific date and in support of his plea of alibi, learned counsel has produced phone network information.

4. The allegations made in the complaint if accepted on their face value as true, they would certainly disclose commission of the offences referred *supra*. The plea of alibi set up by learned counsel for the petitioners that petitioner No. 1 was at Hyderabad at the relevant point of time cannot be taken into consideration to accept his presence at Hyderabad basing on the phone network information. However, such defence can be raised during trial and the petitioners can adduce evidence in terms of Section 11 of the Indian Evidence Act, 1872, since the burden is always on petitioner No. 1 to prove that he was somewhere else and not possible to appear at the scene of offence at the relevant point of time. Hence, on the ground of plea of alibi, this Court cannot quash the proceedings disbelieving the presence of petitioner No. 1 at the relevant point of time since it is a disputed question of fact to be decided only after trial.

5. The other contention raised by learned counsel for the petitioners before this Court is that when no crime was registered basing on the report lodged by respondent No. 2 by Raidurgam Police, question of demanding her to withdraw the same does not arise but it cannot be a ground to quash the proceedings for the reason that the petitioners are not aware of whether the report of respondent No. 2 was registered or not by the time the incident took place. I, therefore, find no ground to quash the proceedings at this stage and the criminal petition is liable to be dismissed.

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

Date: 20-08-2018.
JSK

M.SATYANARAYANA MURTHY, J.

