

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9027 OF 2018

ORDER:

This petition is filed under Section 482 of Cr.P.C. by the petitioner-accused to quash the proceedings against him in C.C.No. 73 of 2018 on the file of the Court of III Additional Junior Civil Judge, Tirupati, registered for the offences punishable under Sections 353, 323 and 506 of IPC.

2. One M.Varumani, Police Constable, Tirupati West Police Station, Tirupati-respondent No. 2 lodged a written report with S.H.O., Tirupati West Police Station, on 14-03-2018 alleging that while he and his S.I. along with other staff were conducting vehicle checking at Sri Ramachandra Pushkarini Bus Stop, SVRRGG Hospital Road, Tirupati, the petitioner was coming on Fazer white and blue colour motorcycle bearing No. AP 03 BM 8425 on wrong side; that when he stopped the petitioner, the petitioner assaulted him, caught hold of his uniform, kicked him, threatened him and also abused him in filthy language; that when Sub-Inspector of Police (L.W.2) interfered with, the petitioner also pushed him aside, caught hold of his shirt and abused him in filthy language and that all the staff apprehended him and took him to police station. Basing on the above report, a case in crime No 40 of 2018 is registered, issued FIR and took up investigation. During the course of investigation, as many as eight witnesses are examined and their statements are recorded under Section 161 (3) of Cr.P.C. On the basis of evidence collected during investigation, charge sheet is filed having concluded that there is *prima facie* material to proceed against the petitioner for the offences referred *supra*.

3. The present petition is filed on the ground that the petitioner along with his family members filed a suit in O.S.No. 364 of 2015 on the file of the Court of I

Additional Junior Civil Judge, Tirupati, against police department including the S.H.O., Tirupati West Police Station, for permanent injunction and the police also filed a suit in O.S.No. 141 of 2016 on the file of the Court of III Additional District Judge, Tirupati, against him for declaration of title and consequential injunction and they are pending and that due to grudge, the petitioner is falsely implicated in the present case. It is also contended that there is no possibility of committing such acts against a police constable who was on duty and requested to quash the proceedings.

4. At the hearing, while learned counsel for the petitioner has reiterated the contentions raised in the petition, learned Public Prosecutor (A.P.) has opposed the petition.

5. Undoubtedly, respondent No. 2 is a police constable working in Tirupati West Police Station and as per the material on record, he was on duty at the time of the alleged incident. It is also equally not in dispute that there is a dispute with regard to certain property and in that connection, two suits are filed against each other and they are pending before competent civil Courts. However, the suits are pending since 2015 and therefore, it is difficult to conclude at this stage that on account of pendency of civil suits, the present case is foisted against the petitioner by respondent No. 2. Even otherwise, respondent No. 2 is only a police constable working under the control of the plaintiffs in O.S.No. 141 of 2016 and he is not supposed to make such serious allegations being a low cadre employee in police department. Therefore, on the ground that a false case is foisted against the petitioner in view of pendency of civil suits, the proceedings against the petitioner cannot be quashed since respondent No. 2 is not a party to any of the suits.

6. Threatening to kill respondent No. 2 and catching hold of his shirt while he was on duty at the time of the incident would directly attract the offence punishable under Section 353 of IPC as respondent No. 2 is a public servant as defined under Section 21 of IPC and the act committed by the petitioner attracts the offence of assault and criminal force against respondent No. 2 who was discharging his duties as a police constable at the time of the alleged incident. Using criminal force or assault against respondent No. 2 while on duty amounts to deterring a public servant from discharging his duties and it would attract the offence punishable under Section 353 of IPC *prima facie*. The other allegation that the petitioner threatened respondent No. 2 to kill would constitute the offence punishable under Section 506 of IPC and similarly, voluntarily causing hurt would constitute the offence punishable under Section 323 of IPC *prima facie*. When there is *prima facie* material to constitute the above offences, this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings at this stage and consequently, the petition is liable to be dismissed.

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

Date: 19-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.

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DATE: 19TH SEPTEMBER, 2018

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