

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Writ Petition No.37124 of 2018

ORDER:

The petitioners are A1 to A4 and the respondent No.3 is the *de facto* complainant. The petitioners are seeking to quash the proceedings in S.C.No.23 of 2016 pending on the file of the learned Additional Assistant Sessions Judge, Nellore, outcome of Crime No.89 of 2015 dated 07.11.2015 of Krishnapatnam Police Station (PRC No.11 of 2015). The crime is registered and the committal Magistrate taken cognizance for the offence punishable under Section 307 r/w 34 IPC against the accused persons from the police investigation and committed to the Sessions Division and after allotment of Sessions Case number under Section 193 Cr.P.C. at the post committal cognizance by the Magistrate under Section 190 r/w 209 Cr.P.C. made over to the learned Assistant Sessions Judge where it is pending.

2. Heard the learned counsel for the petitioners and the learned Government Pleader for Home appearing for the respondents 1 & 2 before admission and before notice to respondent No.3.

3. The main contention is that there is no sanction of the Central Government contemplated by Section 188 Cr.P.C. to sustain the cognizance order of the learned committal Magistrate vis-à-vis that of the learned Sessions Judge respectively under Section 190 and 193 Cr.P.C. and the Sessions Case proceedings are liable to be quashed at the threshold for want of sanction as per Section 188 Cr.P.C. proviso sub-section (b), which is a prerequisite against the Indian citizens and if the

offence committed outside the Indian limits including on the high-seas beyond Indian limits. The authority on the aspect is the three Judge Bench expression of the Apex Court in **Thota Venkateshwarlu v. State Of A.P.**¹

4. However, the fact remains that from perusal of the very charge sheet averments, it is within the Bay of Bengal in the Indian limits of the high-seas. Once such is the case, Section 188 Cr.P.C. bar or any prerequisite of prior sanction of Central Government no way contemplated. It is not the case for otherwise any sanction is required for the cognizance among Sections 190 to 199 Cr.P.C. If at all any such contention is there to raise that is left open to urge before the learned Additional Sessions Judge for so far no charges shown framed. It is one of the contentions that from perusal of the material on record no case is made out. It is hardly acceptable of such a contention as the very final report shows the attack of the accused persons on the *de facto* complainant and the statement is in corroboration besides the other witnesses not even eye witnesses. Their statements are admissible under Section 8 of the Indian Evidence Act, 1872 on motive and as to the circumstances in relation to the occurrence and how far there is credibility to said statement of the *de facto* complainant informant is a matter of appreciation from evidence during trial. Once such is the case from the prosecution material, there is nothing to quash the proceedings. The other points urged is at best the offence punishable under Section 323 IPC that

¹ (2011) 9 SCC 527

attracts. As charges not so far framed and if at all any discharge application the petitioners want to file, it is left open to file. Otherwise even, the Additional Sessions Judge while hearing before charges as contemplated by Sections 225 to 228 Cr.P.C. If at all there is no case triable by the Court of Sessions and only either offence under Sections 323 or 324 IPC and not Section 307 IPC that made out *prima facie*, the learned Judge can send back the case to the committal Magistrate for trial according to law and the same is made clear from the very wording of Section 228 Cr.P.C.

With the above observations, this Writ Petition is disposed of. Any further grievance is left open. No costs. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

15.11.2018
MVA

