

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.8615 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. for quashing the proceedings in C.C.No.335 of 2015 on the file of the learned Special Judicial Magistrate of I Class, Railways, SPSR Nellore.

2. Heard the learned counsel for the petitioner/accused No.4, the learned Assistant Public Prosecutor representing the respondent No.1-State and perused the record.

3. The learned counsel for the petitioner/accused No.4 would submit that the petitioner/A.4 is falsely implicated in this case. The *de facto* complainant-LW1 and other witnesses – LWs 2 to 7 are all interested witnesses and there are no statements of the independent witnesses to implicate the petitioner in this case. The learned Magistrate, without recording the sworn statement as well as assigning reasons and when a charge sheet is filed deleting the name of the petitioner/A.4, has taken cognizance, which is erroneous. There is no material to take cognizance against the petitioner/A.4 for the offence under Sections 324 and 290 I.P.C. and proceeded with, and ultimately prayed to quash the proceedings in C.C.No.335 of 2015 on the file of the learned Special Judicial Magistrate of I Class, Railways, SPSR Nellore.

4. The learned Assistant Public Prosecutor opposed the same and contended that the learned Magistrate, after issuing notice to the *de facto* complainant (LW1) and after hearing him, took cognizance against the petitioner/accused No.4 for the offence under Sections 324 and 290 I.P.C. When there are allegations against this petitioner constituting the offence under Sections 324 and 290 I.P.C., there is

nothing wrong on the part of the learned Magistrate in taking cognizance and proceeding with, and ultimately prayed to dismiss the petition.

5. In view of the contentions of both the sides, the point for determination is – Whether the proceedings in C.C.No.335 of 2015 on the file of the learned Special Judicial Magistrate of I Class, Railways, SPSR Nellore, are required to be quashed against the petitioner/A.4?

6. As per the case of prosecution, there is some dispute with regard to a house between the *de facto* complainant and his family members and other accused in this case except petitioner/A.4. On 16.03.2015 at about 18.00 hours, when *de facto* complainant and LWs 2 to 4 were talking with one Rajeswaramma, A.1 to A.3 intervened and supported her and a quarrel took place. During that quarrel, A.1 beat the *de facto* complainant with iron rod, A.2 also beat him with a stick and caused grievous injuries. It is also an allegation that A.3 beat LW2 with a kitchen knife on her right upper arm. Thereafter, when LW1, LW2 and others were going to the police station to report the commission of offence by the accused Nos.1 to 3 in this case, they found the Sub-Inspector of Police/petitioner-A.4 herein was on the way and the petitioner/A.4 abused them in filthy language. It is also alleged that the petitioner/A.4 beat the *de facto* complainant and LW2 in this case. This case is investigated by the Deputy Superintendent of Police and he filed charge sheet against A.1 to A.3 for the offence under Section 324 r/w 34 I.P.C. Further, accused No.1 was also charge sheeted for the offence under Section 354 I.P.C. The Sub-Divisional Police Officer, after investigation, did not charge sheeted the petitioner/A.4. The Magistrate, having perused the record and after due notice to the *de facto* complainant, took cognizance against the petitioner/A.4 for the offence under Sections 324 and 290 I.P.C. Aggrieved by the same, the petitioner/A.4 filed the present petition to quash the above C.C.

7. The witnesses, who are examined as LWs 1 to 6, clearly and categorically stated that the petitioner/A.4 beat LW1. They have supported the case of LW1. There is a relationship between LWs 1 to 6. Merely because LWs 1 to 6 are related to each other, it cannot be said that they made false statements to the Investigating Officer. However, LWs 8 to 15 did not reveal the involvement of petitioner/A.4 in this case. As per their statements, the Sub-Inspector of Police, T.P.Guduru/petitioner-A.4 admonished the accused Nos.1 to 3 over the quarrel and tried to settle their dispute amicably and instructed LWs 1 and 2 to board the jeep, so that he would settle the matter in the police station after securing the village elders. There is also an allegation against petitioner/A.4 that he took away the motorcycle belonging to LW4 to the police station. Admittedly, the motorcycle is not the crime vehicle. There are specific allegations relating to overt acts committed by petitioner/A.4, caused to victims in this case.

8. In the circumstances, there are grounds for the learned Magistrate to take cognizance against the petitioner/A.4 for the offence under Sections 324 and 290 I.P.C. The learned Magistrate cannot be faulted with in doing so. The truth or otherwise is required to be investigated after due process of law and there are no circumstances to allow the application as prayed for.

9. Accordingly, this Criminal Petition is dismissed. The interim stay granted on 21.06.2016 shall stand vacated. Miscellaneous petitions, if any pending in this Criminal Petition, shall also stand dismissed.

Dr. SHAMEEM AKTHER, J

Date: 14-02-2018

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