

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRI.P.No.12342 of 2018

ORDER:

Heard counsel for the petitioner-A2 and the Public Prosecutor for 1st respondent. For no representation to the 2nd respondent proof of service even filed and perused the grounds in the quash petition seeking to quash the proceedings in C.C.No.3/2016 pending on the file of the Additional Judicial Magistrate of I Class at Nirmal for the offences punishable under Section 186 and 506 (ii), read with 34 of Indian Penal Code and also perused the police Final Report and with Part II Case Diary and the Judgment in C.C.584/2009 out of the self same crime 71/2007 where A1 and A3 faced trial and were acquitted by Judgment dated 03.03.2017. It is there from the petitioner is seeking to quash the proceedings in saying on the self same evidence two of the accused already acquitted and he is also entitled to the same benefit under the issue estoppel.

Learned Public Prosecutor opposed the same.

Heard and perused the material on record with reference to the benefits referred supra.

A perusal of the charge sheet covered of the investigation material shows that the allegations are self same and common against all the three accused persons that all the accused while transporting Teak Wood, illegally, in three

DB cards from Mamada Mandal to Nizamabad side for unlawful gain at Laxmanchanda Police Station limits of Chinthalthanda village were caught hold off and they also caused obstruction to the public servants in discharging of their duties by threatening to kill them by trying to attach them when they intercepted. The charge sheet filed supra is under Section 186 and 506 (ii), read with 34 of Indian Penal Code concerned for the police to register the crime and to file charge sheet, there is a bar under Section 195(1) Cr.P.C. and thereby cognizance order is unsustainable. So far as offence under Section 506 IPC is concerned it is a non-cognizable offence. There is nothing to show even obtaining of the permission of the Magistrate under Section 155, Clause 1 and 2 of Cr.P.C. Leaving it as it is, from the evidence adduced, A1 and A3 already acquitted by Judgment. Prosecution failed to prove the guilt of the accused on the charges.

Having regard to the above accused is also entitled to the same benefit but for the fact that he was in abscondence the case is separated from the original case of C.C.3/2016. So far as his causing inconvenience to the State and the prosecution agency by his abscondence and also to the Court by taking the valuable time of the Court it is subjects to his payment of Rs.10,000/- towards costs to the State the petition is allowed. He has to pay the costs within two weeks from the date of receipt of a copy of this order before the trial

Court and in the absence of which the petition can be taken as stand dismissed for all purposes as if the case is pending for the trial Court to proceed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.31.01.2019
tk.