

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13712 of 2018

ORDER:

The petitioner by name Smt. Reena Sadana is the accused in CC.No.1133 of 2016. The 1st respondent is the complainant by name Supreet Singh. It was on the report of the complainant on 15.03.2016 at 21.00 hours the PS Panjagutta registered crime No.216/2016 originally for the offence punishable under Section 289 IPC from its reading that on 11.03.2016 at about 00.35 AM a ferocious dog named Naughty unleashed by watchman to attack him when he entered into his house from the common gate sharing after he got out of his car from its attack in brutal by bite on his clavicle, it was with the intention and purpose to get him injured. Reena Sadana-accused supra has been harassing through the dog again by making even colleague and family friend to stay away keeping the dog open by its preventing them from coming into his house and he was treated in Care Hospital with anti booster injection etc. Among the 3 witnesses cited in the charge sheet from the investigation LW.3 is IO, LW.1 is the complainant supra and LW.2 is the Doctor of Care Hospital who treated the injured and issued medical certificate and the charge sheet shows including from the medical certificate of injury simple in nature and the charge sheet filed is against Anuradh Sharma watchman of the premises without charging said Reena Sadana. The defacto complainant supra raised protest.

2. The protest petition of the defacto complainant in CrI.M.P.No.2871 of 2018 speaks besides the above that from the charge sheet filed by the police supra learned Magistrate allotted

CC.No.1133 of 2016 and the same is pending trial and police filed final report only for the offence under Section 289 IPC instead of mentioning other offences attract under Section 307, 506, 120-B & 427 r/w 34 IPC and police did not even record statements of the witnesses appeared before them to speak on the incident and not even collected the CCTV footage and said Anuradh Sharma is servant of Reena Sadana and they colluded together in waiting for opportunity for arrival of the complainant and when he came Reena Sadana threatened by standing at Balcony of going to see his end and instructed Anuradh Sharma to let the dog which is a mix of street and bull dog breed and instigated to attack him to kill in dark night and the dog ferociously pounced on him, but which he could luckily survived that is covered by CCTV footage and the motive behind is civil dispute pending between the defacto complainant and Reena Sadana in OS.No.188 of 2014 on the file of II Additional Chief Judge, City Civil Court, Hyderabad and she has been staying illegally in a portion of the house of the complainant without paying rents and attempting all sorts of illegal ways to eliminate him and to grab the property and also by terrorizing him in several ways and the incident was witnessed by Mohd Sohrab Mirza Shakeelbai and Mohd Qutubuddin and they were not even examined by the IO and it is necessary to record their statements and filed with the protest petition the CCTV footage and the photos of the occurrence and Care Hospital out patient diagnosis (MLC.No.193 of 2016) with medical bills dated 15.03.2016. The protest was dated 27.02.2018, charge sheet filed supra in 2016 and numbered in 2016. On the protest application the order of the learned Magistrate after recording sworn statement of the

complainant supra that from perusal of the sworn statement of the complainant and witnesses with reference to the above versions, it establishes Reena Sadana and Anuradh Sharma committed the offences punishable under Sections 307 & 324 r/w 34 IPC also thereby Reena Sadana added as additional accused and altered Section of law to the offences punishable under Sections 307 & 324 r/w 34 IPC in directing to convert the CC.No.1133 of 2016 into PRC. Said order was dated 13.08.2018 which is in Crl.M.P.No.2871 of 2018.

3. The sworn statement of the defacto complainant recorded on the said protest in taking cognizance by the learned Magistrate shows that he could escape from jumping and running with fear of death still had a bite injury on his right leg from both accused released dog which is a ferocious one knowingly with intent to kill him as motive for the earlier civil dispute pending for eviction and same is covered by CCTV footage and other witnesses are Mohd Sohrab Mirza Shakeelbai and Mohd Qutubuddin. From the original report dated 15.03.2016 for the occurrence after midnight of 11.03.2016 with such delay mentions of the ferocious dog was let of from the chain by the watchman to attack him when he entered the house through the sharing gate and got out of his car and sustained bite injury by mentioning Reena Sadana has been harassing by using the dog and even his family friends were to stay out with fear of entering from let the dog free knowingly. From the fact that the dog is a ferocious one and knowingly from its release without precaution that too when the gate is common when the complainant is entering the house and get down from his car when the dog bitten, it at best makes out the offence under Section 324

IPC and there is no offence under Section 307 IPC even for the learned Magistrate to take cognizance and so far as the accusation questioned against Reena Sadana in taking cognizance concerned, the earlier investigation right from the FIR even speaks about there are civil disputes between the Reena Sadana and the complainant and the act of watchman is at her instance. Once such is the case, there is nothing to quash the entire FIR, but for left open any defence of the so called delay in FIR with distorted version by false implication a matter for trial including as to any sustainable accusation to arrive from perusal of the part-II case diary if no offence attracts under Section 234 IPC to frame charge under Section 323 IPC.

4. With these observations, this Criminal Petition is allowed in part by quashing the said cognizance order on the protest application in so far as taking cognizance of offence under Section 307 IPC by retaining the cognizance for the other offence under Section 324 IPC and the case as triable by Magistrate the question of allotting PRC and committing to the Court of Session does not arise, but for by virtue of this order in directing the learned Magistrate to retain as CC by allotting fresh number and proceed for hearing before charges as contemplated by private warrant procedure. So far as offence under Section 324 IPC concerned, if at all any offence made out to frame charge against both the accused and try along with the original CC.No.1133 of 2016 that was originally taken cognizance against Anuradh Sharma for the offence under Section 289 IPC by following the procedure contemplated under Section 210 Cr.P.C. of police case and private complaint case together for same occurrence.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.03.2019
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