

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.4167 of 2019

ORDER:

The Criminal Petition is filed seeking quashment of C.C.No.472 of 2017 on the file of learned I Additional Judicial Magistrate of First Class, at Godavarikhani registered against the petitioner/Accused for the the offences under Section 294 (B), 323, 506 of Indian Penal Code.

02. Ms. T.Geeta, learned counsel for the petitioner as well as Sri S.Ganesh, learned Assistant Public Prosecutor for the State/Respondent No.1 are present. No representation on behalf of respondent No.2.

03. As per the charge sheet, it is alleged that respondent No.2/de-facto complainant has filed the complaint before police concerned on 19.05.2017 stating that the petitioner/accused has abused him in filthy language and also threatened him in dire consequences on 24.02.2017 and 10.05.2017. Based on the complaint, which was given on 19.05.2017, police have registered the case and completed

the investigation after recording statements and charge sheet was filed and same was taken on record.

04. It is alleged by learned counsel for the petitioner/accused that the allegations levelled against the petitioner/accused is incorrect and there is delay of more than three months in respect of first offence alleged to have been took place on 24.02.2017 and also delay of 9 days in respect of filing the complaint.

05. It is true that there is enormous delay in filing of complaint in respect of incident, which took place on 24.02.2017. No proper explanation has been offered as to why the complaint could not be registered in respect of the offence alleged to have been committed on 24.02.2017. So far as the offence alleged to have been committed on 10.05.2017 also, complaint should have been filed immediately. The explanation offered by the respondent No.2/de-facto complainant is not satisfactory for filing the complaint with delay. However, this Court is of the opinion that filing the complaint with delay is not a ground to consider the charge sheet. The trial Court is expected to take

a call as to whether any prejudice is caused to the petitioner/accused on account of filing of the complaint at a belated time.

06. So far as the allegations levelled against the petitioner/accused is concerned that the petitioner/accused stated to have been abused in filthy language bet him with hands and threatened with dire consequences of killing. The witnesses whose statements were filed before the Court corroborated the contents of complaint. Therefore, this is a case where lot of factual issues are involved which are required to consider by trial Court. It is reported by learned counsel for the petitioner/accused that charges have already been framed and trial has already been commenced and four witnesses were already examined.

07. As seen from the contents of the complaint and statements according to Section 161 Cr.PC., it appears that there are no grounds to consider that the petitioner/accused has committed the offence under Section 294(B) of the Indian Penal Code and the trial Court has to take note of this, while considering the evidence against the petitioner/accused.

08. Considering the circumstances, this Court is of the opinion that once the trial has already been commenced, the petitioner/accused is at liberty to take all whatever defendants raise before the trial Court during the course of trial. The trial Court is also expected to consider the delay in filing of the complaint.

09. In view of the above, this Criminal Petition cannot be maintainable and is liable to be dismissed.

10. Accordingly, this Criminal Petition is dismissed.

As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

Date: 30-Dec-2022
TMK

DR. D.NAGARJUN, J

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