

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 11650 OF 2022

Between:

1. Syed Farooq Hussain, S/o Syed Farhad Hussain, Age 30yrs, Occ Software Engineer, R/o H.No.12-2-790, Navodaya colony, Gudimalkapur, Asifnagar, Hyderabad.
2. Sayed Sadiq Hussain, S/o Syed Farhad Hussain, Age 29yrs, Occ Software Engineer, R/o H.No.12-2-790, Navodaya colony, Gudimalkapur, Asifnagar, Hyderabad.
3. Syed Jannath Hussain, S/o Syed Farhad Hussain, Age 23yrs, Occ Software Engineer, R/o H.No.12-2-790, Navodaya colony, Gudimalkapur, Asifnagar, Hyderabad.
4. Syed Farhad Hussain, S/o Late Syed Khader, Age 63yrs, Occ Retired Inspector, R/o Flat No.201, Key Marvell Apartment, H.No.12-2-709/58, Mehdiapatnam, Hyderabad.

...PETITIONER/ACCUSED Nos.1 to 4

AND

1. The State of Telangana, Rep. by the Public Prosecutor, High Court at Hyderabad.
2. Md Tabrez, S/o Mohd. Ahmed Pasha, Age 30yrs, Occ Farmer, R/o H.No.7/5/195/2, Lakshmi nagar colony, Mahabubnagar.

...RESPONDENT/COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the proceedings in Cr.M.P.No.875/2022 in C.C.No.6817 OF 2022 on the file of II Addl. Chief Metropolitan Magistrate, Hyderabad for the offences U/Sec 307 r/w 34, 120-B of IPC.

I.A. NO: 1 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay of all proceedings including appearance of petitioners in Cr.M.P.No.875/2022 in C.C.No.6817 OF 2022 on the file of II Addl. Chief Metropolitan Magistrate, Hyderabad during pendency of criminal petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri M.Saroj Reddy, Advocate for the Petitioners and the Public Prosecutor on behalf of the Respondent No.1:

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.11650 OF 2022****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") by the petitioners – Accused Nos.1 to 4 questioning the correctness of the order passed by the II Additional Chief Metropolitan Magistrate, Hyderabad in CrI.M.P.No.875 of 2022 in C.C.No.6817 of 2022 whereby the learned Magistrate on the application made by the *de facto* complainant added Accused No.4 who is the 4th petitioner herein as an accused along with other accused.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent No.1-State.

3. Initially the police had registered a case under Section 307 read with Section 34 of IPC and thereafter filed a charge sheet against Accused Nos.1 to 3 only for the offence under Section 324 of IPC. Having taken into consideration, the protest application of the *de facto* complainant stating that Accused No.4 is the person who has instigated Accused Nos.1 to 3 and also on the basis of the

injuries that were seen in the photographs which clearly indicated that the *de facto* complainant had sustained cut injury on his head, cognizance was taken against these petitioner for the offence under Section 307 read with Section 34 of IPC.

4. The learned Magistrate found that the cognizance had to be taken against Accused No.4 also since the facts of the cases attract the ingredients of Section 307 read with Section 34 and 120B of IPC, accordingly, took cognizance under Section 307 read with Section 34, 120(B) of IPC against A1 to A3 and also A4 by adding him as co-accused.

5. The learned counsel appearing for the petitioners would submit that under Section 210 of Cr.P.C. if there is a private complaint and police report on the very same facts, the same shall be enquired together as both the cases are instituted together. For which reason, the cognizance taken by the learned Magistrate including Accused No.4, for the offence under Section 307 of IPC is contrary to the provisions of Section 210 Cr.P.C. and prayed to quash the proceedings.

6. The concerned Magistrate Court has powers under Section 209 of Cr.P.C. to commit any accused to the Court of Session if it appears to the said Magistrate that the offences are triable exclusively by the Court of Session. When the charge sheet was filed before the concerned Magistrate, an application was also made by the *de facto* complainant stating that though the police had initially registered the offence under Section 307 of IPC, erred in filing the charge sheet under Section 324 of IPC. As argued by the learned counsel for the petitioners, Section 210 Cr.P.C. has no application since there is no separate complaint but a protest petition was filed by the 2nd respondent to take cognizance of offence under Section 307 of IPC and also add 4th petitioner as accused.

7. The intention in causing injuries would determine whether the offence falls within the provision of Section 324 of IPC or 307 of IPC. *Prima facie* when the learned Magistrate found that cut injury was on the vital part of the body which is head, the Court found that it is an offence made out under Section 307 of IPC. The said finding of the learned Magistrate coming to a conclusion that the

offence would be under Section 307 of IPC cannot be found fault with.

8. The learned Magistrate has recorded the sworn statement of the complainant, wherein he specifically mentioned regarding the role of Accused No.4 who is the father-in-law of the complainant and at his instance Accused No.1 to 3 had beat him indiscriminately all over his body, causing grievous bleeding injuries on his head with iron rods and bricks.

9. The procedure adopted by the learned Magistrate in recording the sworn statement and on the basis of the said sworn statement, coming to a conclusion that the offence made out is one under Section 307 of IPC and exclusively triable by a Sessions Court cannot be found fault with.

10. Accordingly, there are no grounds to interfere with the order passed by the II Additional Chief Metropolitan Magistrate, Hyderabad in Crl.M.P.No.875 of 2022 in C.C.No.6817 of 2022.

11. With the above observations, the Criminal Petition is dismissed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- A.V.S.PRASAD
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The I Additional Chief Metropolitan Magistrate at Hyderabad
2. The Station House Officer, Asif Nagar Police Station, Hyderabad
3. One CC to Sri M.Saroj Reddy, Advocate (OPUC)
4. Two CCs to Public Prosecutor, High Court of Telangana at Hyderabad(OUT)
5. Two CD Copies

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HIGH COURT

DATED:26/12/2022



ORDER

CRLP.No.11650 of 2022

DISMISSING THE CRL.P

(8) VLV
8/2/23