

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10721 OF 2022

ORDER :

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed seeking to quash the proceedings in S.C.No.78 of 2022 pending on the file of I Additional District Sessions Judge at Khammam, against the petitioner - accused No.4 in the said case. The offences alleged against him are under Sections 120(b), 294(b), 323, 341, 448, 379, 504 read with 149 of Indian Penal Code (for short 'IPC') and Section 3(1)(r)(s) of SC/ST (POA) Act, 2015.

2. Heard learned counsel for the petitioner, learned counsel for the 2nd respondent and learned Additional Public Prosecutor for the State and perused the record.

3. The 2nd respondent – *de facto* complainant filed a complaint stating that accused Nos.1 to 13 trespassed into the premises of her rented house, assaulted her and beat her with hands. Accused No.1 has stolen the gold chain of 2nd respondent weighing 5 tulas. Thereafter, accused Nos.1 to 8, 10 to 12 tied the 2nd respondent and LW4 with electrical wire and brought them out from the house by

beating with hands and abusing them with an intention to defame them in public. Accused No.1 abused the 2nd respondent using the name of her caste. Accused No.2 beat LW2 with hands and abused in filthy language. Accused No.5 used criminal force on the minor victim girl/LW3 and abused her in filthy language. Meantime, the accused No.7 stole two gold black bead chains and other ornaments and cash of Rs.3,00,000/- and documents.

4. On the basis of said complaint, police filed charge sheet against the accused persons. During the course of investigation, Police found that the 2nd respondent who is LW1 was having illegal intimacy with LW4 who is the husband of accused No.1. LW1 and LW4 are having extra marital relation over a period of eight (8) years and LW4 did not bother about accused No.1 and this petitioner who is their son - accused No.4. Several panchayats were held, however, there was no change in the attitude of husband of accused No.1. Both LW1 and LW4 were living as husband and wife.

5. Learned counsel for the petitioner would submit that there is no specific allegation against this petitioner in the alleged assault that has taken place on the date of incident. Only for the reason of mentioning the name of petitioner by the 2nd respondent, the

prosecution cannot be continued against this petitioner. A complaint was lodged by the 2nd respondent to the Human Rights Commission stating that the Investigating Officer in the present case has not recovered any of the gold and two wheeler vehicle which was taken away by accused Nos.1 to 13. It is apparent that no such property was identified and a false case has been foisted.

6. On the other hand, learned counsel for the 2nd respondent would submit that the name of petitioner is clearly mentioned in the 161 Cr.P.C. Statement of the 2nd respondent – LW1. It is further mentioned that accused Nos.1 to 8 and others have tied the hands of LW1 and brought out her from the house. In the said circumstances, in the statement, when it is specifically mentioned about the acts committed by this petitioner, the proceedings against this petitioner cannot be quashed.

7. Having perused the complaint, charge sheet and 161 Cr.P.C. statements, this petitioner who is the son of accused No.1 was present when the alleged incident has taken place. It is the case of LW1 that accused Nos.1 to 13 have trespassed into her premises and assaulted her and her children. Further, gold ornaments and cash were also subjected to theft. However, specific allegations are made

against accused Nos.1, 2, 5 and 7, during the said assault. Though the presence of this petitioner is mentioned when the incident had taken place, there is no specific overact in the statement attributing to this petitioner. Mere presence of this petitioner at the scene without being involved in the altercation or assault that has taken place, the prosecution cannot be continued against this petitioner who is a Student. This petitioner being a son of accused No.1 in all probability has accompanied his mother to the place where the alleged incident had taken place and the place where the 2nd respondent and father of this petitioner were having illegal intimacy over a period of eight (8) years. In the said circumstances, the petitioner accompanying his mother cannot be found fault with in the background of there being no specific allegations or overt acts attributed to this petitioner and the proceedings against this petitioner are liable to be quashed.

8. Accordingly, the Criminal Petition is allowed and the proceedings against this petitioner – accused No.4 in S.C.No.78 of 2022 pending on the file of I Additional District Sessions Judge at Khammam, are hereby quashed.

Miscellaneous Petitions, if any, pending, shall also stand closed.

Date: 06.02.2023
rev

K. SURENDER, J