APHC010398092023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3604]**
(Special Original Jurisdiction)

WEDNESDAY, THE 14th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION Nos: 5907 & 6473 OF 2023

Crl.P.No.5907 of 2023:

Between:

1. AMBUHALAPU CHITTABBAI @ CHANTABBAI, S/O APPARAO, HINDU, AGED ABOUT 38 YEARS, CULTIVATION, R/O SRUNGAVRUKSHAMPETA VILLAGE, THONDANGI MANDAL, EAST GODAVARI DISTRICT

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP.BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI.
2. AMBUJALAPU BABURAO, , S/O LATE APPARAO, HINDU, AGED ABOUT 34 YEARS, R/O SRUNGAVRUKSHAMPETA VILLAGE. THONDANGI MANDAL, EAST GODAVARI DISTRICT.
3. AMBUJALAPU VARA LAKSHMI, S/O BABURAO, HINDU, AGED ABOUT 25 YEARS, R/O SRUNGAVRUKSHAMPETA VILLAGE, THONDANGI MANDAL, EAST GODAVARI DISTRICT.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Courtpleased to set aside the Order dated 19-07-2023 in Crl.M.P.No.540//2022 in C.C.No.91/2015 on the file of the Court of the

Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni, East Godavari District, consequently allow Crl.M.P. No.540/2022 by directing the trial court to issue summons to Radiologist, Kakinada and pass

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased to grant stay of all further proceedings in C.C.No.91/2015 on the file of the Court of the Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni pending disposal of main Criminal Petition and pass

Counsel for the Petitioner/accused:

1. NARASIMHA RAO GUDISEVA

Counsel for the Respondent/complainant(S):

1. GRANDHI PRIYANKA
2. PUBLIC PROSECUTOR (AP)

Crl.P.No.6473 of 2023:

Between:

1. AMBUJALAPU CHITTABBAI @ CHANTABBAI, S/O APPARAO, HINDU, AGED ABOUT 38 YEARS, CULTIVATION, R/O SRUNGAVRUKSHAMPETA VILLAGE, THONDANGI MANDAL, EAST GODAVARI DISTRICT

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP.BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI.
2. AMBUJALAPU BABURAO, S/O LATE APPARAO, HINDU, AGED ABOUT 34 YEARS, R/O SRUNGAVRUKSHAMPETA VILLAGE, THONDANGI MANDAL, EAST GODAVARI DISTRICT.
3. AMBUJALAPU VARA LAKSHMI, S/O BABURAO, HINDU, AGED

ABOUT 25 YEARS, R/O SRUNGAVRUKSHAMPETA VILLAGE, THONDANGI MANDAL, EAST GODAVARI DISTRICT

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Courtpleased to set aside the Order dated 19-07-2023 in Crl.M.P.No.539//2022 in C.C.No.91/2015 on the file of the Court of the Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni, East Godavari District, consequently allow Crl.M.P. No.539/2022 by issuing the orders to the Radiologist Medical Officer, Government General Hospital, Kakinada to produce the X-Ray 25175 dated 11-06-2014 vide MLC No.1602 along with case sheet and pass

Counsel for the Petitioner/accused:

1. NARASIMHA RAO GUDISEVA

Counsel for the Respondent/complainant(S):

1. GRANDHI PRIYANKA
2. PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION Nos. 5907 AND 6473 OF 2023

COMMON ORDER:

Criminal Petition No.5907 of 2023 is filed by the petitioner/de facto complainant challenging the order dated 19.07.2023 passed in Crl.M.P.No.540 of 2022 in C.C.No.91 of 2015 on the file of the learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni, East Godavari District. The said application was filed under Section 311 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), seeking to reopen the case for the purpose of examining the Radiologist.

2. Criminal Petition No.6473 of 2023 is filed by the petitioner/de facto complainant challenging the order dated 19.07.2023 passed in Crl.M.P.No.539 of 2022 in C.C.No.91 of 2015 on the file of the learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni, East Godavari District. The said application was filed under Section 91 of the Cr.P.C., seeking a direction to the Resident Medical Officer, Government General Hospital, Kakinada, to produce X-ray No.25175 dated 11.06.2014, bearing MLC No.1602.

3. The case of the petitioner is that the learned Magistrate ought not to have dismissed the applications, as the proposed witness is the radiologist who examined the injured and whose opinion formed the basis for issuing the wound certificate describing the injury as grievous. It is contended that the evidence of the radiologist and production of the relevant X-ray and medical records are necessary to establish the nature of the injury and to determine whether the ingredients of Section 326 of the Indian Penal Code (for short, "IPC") are attracted. On these grounds, the petitioner seeks allowing of the applications.

4. Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner, and Smt. K. Priyanka Lakshmi, learned Assistant Public Prosecutor for respondent No.1 and Ms. Grandhi Priyanka, learned counsel for respondent Nos.2 and 3.

5. The record shows that, on the report of the petitioner, who is the de facto complainant, crime No.116 of 2014 was registered for the offences punishable under Sections 326 and 324 read with Section 34 of the IPC against respondent Nos.2 and 3. Upon completion of the investigation, the investigating officer filed a charge sheet for the said offences. After completion of prosecution evidence, respondent Nos.2 and 3 were examined under Section 313 Cr.P.C and when the matter was posted for arguments, the learned Assistant Public Prosecutor sought adjournments on five occasions. The applications in question were ultimately filed on 18.07.2022.

6. The learned Magistrate dismissed the applications on the grounds that they had been filed at a belated stage, that the radiologist had not been cited as a witness in the charge sheet and that, if the radiologist's evidence had been considered necessary, the investigating officer ought to have cited the witness at the stage of filing the charge sheet.

7. Learned counsel for the petitioner submits that the radiologist's evidence is necessary to establish the nature of the injury sustained by PW.1, particularly whether it was a fracture and whether it answers the description of a grievous injury for the purpose of Section 326 IPC. It is further contended that the applications were dismissed without properly considering the relevance of the proposed evidence. The learned Assistant Public Prosecutor supports the submissions made on behalf of the petitioner. Per contra, learned counsel for the respondent Nos.2 and 3 argued that the petitions are filed at a belated stage, that too, after taking adjournments to advance arguments, there are no merits in the petitions and entertain these petitions is nothing but abuse the process of law.

8. It is not in dispute that the radiologist was not cited as a witness in the charge sheet. However, that circumstance, by itself, does not preclude the Court from summoning a witness whose evidence appears essential for a just decision of the case. Section 311 Cr.P.C. empowers the Court to summon or examine a person at any stage of an inquiry, trial or other proceeding if the evidence appears essential to the just decision of the case. Likewise, the production of the relevant document may be directed in accordance with Section 91 Cr.P.C., subject to the requirements of law.

9. In the present case, the prosecution relies on the medical evidence to establish the nature and extent of the injury allegedly sustained by PW.1. The wound certificate is stated to have been issued on the basis of the radiologist's opinion. In this regard, it is to be noted that the first part of Section 311 of Code of Criminal Procedure gives purely discretionary authority to a court and enables it at any stage of inquiry, trial or proceeding under the Code: (a) to summon anyone as witness, or (b) to examine any person present in court, or (c) to recall and re-examine any person whose evidence has already been recorded and the second part is mandatory and compels the court to take any of the aforementioned steps if the internal evidence appears to be essential to the just decision of the case. The radiologist's evidence, together with the relevant X-ray and connected medical records, may therefore assist the trial Court in appreciating the medical evidence and arriving at a just conclusion. The fact that the applications were filed at a belated stage is a relevant consideration, but it is not, by itself, sufficient to reject the applications where the proposed evidence appears material to the just adjudication of the case. The respondents/accused would get the opportunity of cross examination. Record reveals that the charge sheet laid under Section 326 IPC and the investigating officer has not shown the radiologist as witness. As rightly argued by the learned counsel for the petitioner, to prove ingredients of Section 326, prosecution must establish the fact that the injured sustained fracture injury.

10. ***In the result***, and for the foregoing reasons, both Criminal Petitions are allowed, setting aside the orders dated 19.07.2023 in Crl.M.P.Nos.540 and 539 of 2022 in C.C.No.91 of 2015 passed by the learned Judicial Magistrate of First Class-cum-Principal Junior Civil Judge, Tuni, East Godavari District.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

14.10.2026

Vns