

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH, AT HYDERABAD
WEDNESDAY, THE THIRTEETH DAY OF SEPTEMBER TWO THOUSAND AND NINE
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Criminal Petition Nos.5633, 5636, 5640, 5644,
5645, 5650, 5660, 5662 and 5682 of 2009

Criminal Petition No.5633 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah
..... Petitioner
AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others
..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in S.C. No.34 of 2009 on the file of the Court of Mahila Judge-cum-IV Additional Chief Metropolitan Magistrate, Vijayawada.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5636 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah
..... Petitioner
AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others
..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in P.R.C.No.27 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5640 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah
..... Petitioner
AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others
..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in C.C.No.2335 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5644 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in C.C.No.2334 of 2008 on the file of the Court of Additional Judicial Magistrate of First Class, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5645 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in P.R.C.No.18 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5650 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in Crime No.284 of 2007 of Nandigama Police Station on the file of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5660 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in C.C.No.2328 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5662 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in C.C.No.2336 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents

Criminal Petition No.5682 of 2009

BETWEEN:

Pidathala Sathyam Babu, S/o late P. Venkaiah

..... Petitioner

AND

The Public Prosecutor, High Court of Andhra Pradesh
and 2 others

..... Respondents

Petition under Section 482 of Cr.P.C. praying that in the circumstances stated in the grounds filed therewith, the High Court may be pleased to quash the criminal proceedings in C.C.No.2370 of 2008 on the file of the Court of Additional Judicial First Class Magistrate, Nandigama, Krishna District.

The petition coming on for hearing, upon perusing the petition and the grounds filed in support thereof and upon hearing the arguments of Sri Bojja Tarakam, Advocate for the petitioner and of Sri C. Nageswararao, learned Public Prosecutor for the respondents,

the Court made the following:

COMMON ORDER:

- All the nine criminal petitions filed by the same petitioner requesting to quash the criminal proceedings in the respective cases involved identical issues and common questions of fact and are, hence, heard and decided together.

Sri Bojja Tarakam, learned senior counsel for the petitioner and Sri C. Nageswararao, learned Public Prosecutor for the respondents in all the petitions are heard at length.

The petitioner contended that on 09-08-2008 when he was at Gandhi Bomma Centre, Nandigama, one police constable by name Laxman Swamy of Nandigama Police Station caught hold of him and forcibly took his slippers. Again at about midnight on 11-08-2008, Nandigama police came to his house at Annasagaram, threatened him and his mother and forcibly took him away in a jeep. The petitioner claimed that he came to know that a dharna was staged in front of the offices of the Mandal Revenue Officer and the Deputy Superintendent of Police of Nandigama by his relatives, community people and democratic organizations for his release from illegal detention and that his mother was admitted in Nandigama hospital due to shock. He learnt that her statement was recorded by the Magistrate. He was taken away and was shown near Kodada to some of his villagers to assure about his safety. The petitioner also came to know on 15-08-2008 that his mother sent a message to the State Human Rights Commission, which issued directions to the police for his production. He was produced before the Judicial Magistrate of First Class, Nandigama at her residence at about 6.45 P.M. on 16/17-08-2008 and was remanded to judicial custody.

The petitioner further contended that he informed the Chief Metropolitan Magistrate, Vijayawada, about the illegal detention and police torture when he was produced before him on 22-08-2008. When the police filed a petition for police custody for obtaining samples of handwritings, foot prints and blood, it was allowed with a condition to interrogate or take the samples in the presence of an advocate and though he was kept in the police station for three days, the samples were taken without the presence of an advocate. He was produced before the Magistrate after three days and when he was in police custody for three days, he never expressed any intention of making any confession or made any confession. He refused to sign on the papers before the medical officers at Hyderabad without his advocate. The petitioner further claimed that he was produced before the Judicial Magistrate of First Class, Nandigama on three or four occasions later, alleging involvement in other crimes and a test identification parade was also conducted by the Judicial Magistrate of First Class, Jaggaiahpet in Sub-Jail, Nandigama.

The petitioner contended that he finally came to know that he was ultimately involved in nine cases basing upon an alleged confession made by him in the presence of the Sub-Divisional Police Officer at Nandigama Police Station at 1.00 A.M., on the intervening night of 16/17-08-2008. The crimes are, —

- 1) Crime No.241 of 2008 of Nandigama police station under Sections 458 and 380 of the Indian Penal Code registered on 10-08-2008 against unknown persons about attack on matron of Government Mahila Polytechnic Hostel at Nandigama and theft of torch light in which case, it was alleged that a pair of chappals, a blade and a torch light were recovered at his instance.
- 2) Crime No.224 of 2008 of Nandigama police station under Sections 450, 457 and 75 of the Indian Penal Code in respect of lurking house trespass at Government Polytechnic College-cum-Hostel, Nandigama, registered on 29-07-2008, in which a charge sheet was filed on 11-11-2008.
- 3) Crime No.152 of 2008 of Nandigama police station registered on 27-05-2008 under Sections 458, 509 and 380 of the Indian Penal Code relating to theft of sound box worth Rs.300/- at Don Bosco Girls High School, at Nandigama on 10-02-2007, for which a charge sheet was filed on 12-11-2008.
- 4) Crime No.154 of 2008 of Nandigama police station under Section 384 of the Indian Penal Code about an incident at residential colony, Nandigama, on 07-01-2008, which was registered on 29-05-2008, for which a charge sheet was filed on 11-11-2008 under Sections 450, 354 and 75 of the Indian Penal Code, which was committed as P.R.C.No.18 of 2009 on 10-12-2008.

- 5) Crime No.153 of 2008 of Nandigama police station under Sections 452, 354 and 341 of the Indian Penal Code about an incident at Hazariya Hostel, Nandigama on 04-11-2007 registered on 28-05-2008. It was claimed that a drainage spade was recovered on 17-08-2008 at his instance and the case was taken on file in C.C.No.2220 of 2008 (2336 of 2008) on the file of Judicial Magistrate of First Class, Nandigama.
- 6) Crime No.284 of 2007 of Nandigama police station under Section 324 of the Indian Penal Code about assault on Vangapati Radha, a second year Intermediate student of Krushi Junior College at Nandigama, on 08-11-2007. One Kamiseti Suman, Principal of Krushi Junior College, was arrested under Section 201 of the Indian Penal Code and remanded to judicial custody as third accused on 04-12-2007 and was later released on bail. Lakshmi Prasanna shown as 2nd accused was arrested on 30-11-2007 and was released on bail. Thereafter, one Gangadhar was arrested as an accused and then the petitioner was implicated. The victim made a statement before the State Human Rights Commission that Lakshmi Prasanna and Gangadhar attacked her and caused bleeding injuries. She also made a statement under Section 164 of the Code of Criminal Procedure before the Judicial Magistrate of First Class, Jaggaiahpet to the same effect. Still the petitioner was implicated *mala fide* by the police.
- 7) Crime No.344 of 2007 of Nandigama police station under Sections 307, 347, 452 of the Indian Penal Code dated 28-12-2007. The case was altered later into one under Section 302 of the Indian Penal Code on the death of Boddu Vara Laxmi, a night watchwoman, at SC Hostel for Girls, Nandigama, about which the parents of the deceased gave a complaint implicating her husband Merugu Raju. The petitioner came to know that on the arrest of Merugu Raju and on his confession on 26-02-2008, an iron rod was recovered at his instance. Merugu Raju was deleted and the petitioner was implicated by filing a charge sheet on 17-11-2008. Merugu Raju is listed as ninth (9th) witness and the iron rod recovered from Merugu Raju referred to Forensic Science Laboratory, Hyderabad, disclosed presence of human blood stains and the same police are claiming recovery of pestle from the petitioner in P.R.C.No.27 of 2008.
- 8) Crime No.11 of 2008 of Nandigama police station under Section 324 of the Indian Penal Code about assault on Thota Rama Devi at Ashok Nagar, Nandigama, for which a charge sheet was filed against the petitioner under Sections 450, 354, 324 and 75 of the Indian Penal Code showing recovery of a crowbar also from the petitioner. A test identification parade was conducted by the Judicial Magistrate of First Class, Jaggaiahpet on 21-08-2008, wherein the victim was said to have identified the petitioner.
- 9) Crime No.477 of 2007 of Ibrahimpatnam police station about the rape and murder of one Ayesha Meera, a student of B. Pharmacy at Limra College, Ibrahimpatnam, on the intervening night of 26/27-12-2007 at 2.00 A.M., at Sri Durga Ladies Hostel, Ibrahimpatnam. The case was registered against unknown persons on the complaint of the parents of the deceased and several persons, who were taken into custody, were interrogated and let off. Specimen handwritings were taken from 400 suspects and 47 blood samples were collected for DNA test. Finally, one Guruvindar Singh @ Laddu was remanded to custody on 09-05-2008 on prima facie evidence. The petitioner came to know that his foot prints tallied with the foot marks obtained at the scene and that a polygraph test was conducted on him. The sensational case with political dimensions led to the police filing a memo on 12-11-2008 seeking permission to withdraw the prosecution against the said Guruvindar Singh on which notice was ordered by the Court to his counsel. Though the matter was posted to 17-11-2008, a charge sheet was filed on 14-11-2008 showing the petitioner as the sole accused. The case was committed to the Court of Session and is pending in S.C.No.34 of 2009 before the Mahila Sessions Judge, Vijayawada. The petitioner learnt that the suspicion of the mother of the deceased about the involvement of some named persons was ignored and that attempts were since the beginning to shield the real culprits. The mother of the deceased complained to the State Human Rights Commission, Mahila Commission and Minorities Commission about the police shielding the real accused and she also filed a petition before the IV Additional Metropolitan Magistrate, Vijayawada, naming five persons as the accused and requesting for fresh investigation. She never named the petitioner and he was implicated for political reasons.

The petitioner claimed that he was involved in all the nine cases solely based on the alleged confession said to have been made by him before the police, on the basis of which no prosecution could be

launched. Except the alleged confession inadmissible in evidence, there is no other direct or indirect or circumstantial evidence against him. The pestle allegedly recovered from him is a common object found at any place in the villages and his prosecution is violative of Sections 25 and 26 of the Evidence Act and Articles 20 (3) and 21 of the Constitution. As held in **State of Haryana and others v. Ch. Bhajanlal and others**^[1], the express legal bar and the mala fides make the proceedings liable to be quashed.

The petitioner stated that the nine cases are at different stages, but he cannot be compelled to face criminal trials upon, *ex facie*, inadmissible evidence and he, therefore, prayed for quashing of further proceedings in all the nine cases.

The alleged confession of the petitioner was recorded under a mediators report on the intervening night of 16/17-8-2008 at 2.15 A.M. claiming that the mediators were sent for to the office of the Deputy Superintendent of Police, where the petitioner was sitting in front of the Deputy Superintendent of Police. It is, thus, evident that the mediators were not present before the Deputy Superintendent of Police asked the mediators at his office to ascertain the particulars of the petitioner sitting before him and that the mediators were consequently unaware of what happened before they reached the said place as to how the petitioner came to be present there.

The petitioner was claimed to have given a graphic description of the background for his psychological state and his committal of the various offences involved in nine cases respectively. The petitioner was claimed to have further stated about showing physical objects concerned with different cases, if he were taken to those places. The mediators' report stated that the confessions of the petitioner were identified as relating to the nine cases involved in the present criminal petitions. The blade said to have been recovered from the petitioner on search of his person was one allegedly stated by the petitioner to have been kept with himself for use in case of necessity while committing crimes, but the said blade does not relate to any of the nine cases. The mediators' report also stated the mediators to have noted injuries on the person of the petitioner, which were healing. The mediators' report was attested by the mediators, scribed by one of them and appeared to be containing the signature of the petitioner also, apart from the signature of the Sub-Divisional Police Officer, Nandigama.

Sections 24 to 27 of the Evidence Act lay down the law relating to the evidentiary status of such confessions and the learned senior counsel for the petitioner referred to **Aghnoo Nagesia v. State of Bihar**^[2], in which the Apex Court stated that the law relating to confessions is to be found in general in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. The Apex Court also stated that a confession made to a police officer under any circumstances is not admissible in evidence against the accused and it covers a confession made when he was free and not in police custody as also a confession made before any investigation has begun. The Supreme Court also pointed out that Section 27 of the Evidence Act is in the form of a proviso and partially lifts the ban imposed by Sections 24, 25 and 26 of the Evidence Act and it provides that when any fact is discovered as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information whether it amounts to a confession or not as relates distinctly the fact thereby discovered may be proved. It was also pointed out that confessions made by an accused to a police officer or made by him, while he is in the custody of a police officer are not to be trusted and should not be used in evidence against him. If proof of the confession is excluded by any provisions of law such as Sections 24, 25 and 26 of the Evidence Act, the entire confessional statement in all its parts including the admission of minor incriminating facts must also be excluded unless proof of it is permitted by some other Section as Section 27 of the Evidence Act.

As such, it is clear that it is only so much of such information as relates distinctly to a fact thereby discovered that may be proved with reference to a confession before or while in the custody of a police officer.

The celebrated decision in **State of Haryana v. Bhajanlal**

(1 supra) reiterated the concern of the Apex Court for personal liberty of a citizen and warned about the serious consequences that would flow when there is non-observance of procedure by the police while exercising their unfettered authority. The Apex Court referred to its earlier dicta that it is of utmost importance that investigation into criminal offence must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly and with any ulterior motive. The Supreme Court made it clear that unlimited discretion in the realm of powers defined by Statutes can become a ruthless destroyer of personal freedom and if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons, since human dignity is a dear value of our Constitution.

The Apex Court also laid down the parameters for exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to quash any criminal proceedings and the learned senior counsel for the petitioner more particularly relied on the following, —

- (a) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (b) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (c) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Supreme Court made it clear that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. It was also pointed out that when there are only allegations and recriminations but no evidence, the Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials available to the Court. In that case, the Supreme Court also reiterated that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant. On an analysis of the facts and circumstances in that case, the Apex Court only quashed the commencement as well as the entire investigation, but not the first information report itself and gave liberty to the State Government to direct an investigation afresh, if it so desires, through a competent police officer in strict compliance with the relevant Statute.

With the above factual and legal background for consideration of the request of the petitioner for quashing of criminal proceedings in these nine cases, the questions that arise for consideration are— Whether any facts relevant to each case have been discovered in pursuance of the alleged retracted confession/confessions and whether any fact or facts so discovered is/are, ex facie, sufficient to attribute any guilt to the petitioner to warrant his further prosecution before the Court. It should also be considered whether apart from any facts discovered in pursuance of such confessions, any other evidence collected by the investigating agency during investigation will make the petitioner liable for prosecution for the alleged offences in each of these cases prima facie or whether the facts and circumstances on record indicate each of these cases to be founded on allegations which are absurd and improbable on their face.

Each of these cases is, accordingly, analysed as hereunder, --

Cri.P. No.5682 of 2009 – C.C. No.2370 of 2008 – Crime No.224 of 2008:

The charge-sheet stated that on the night of 28-07-2008 at about 11 P.M., Peresetty Maheswari Lavanya, Vanakuru Jyothi Prasanna, Thota Krishna Veni and Pesarlanka Nancharamma, the students, slept in room No.4 in the Government Polytechnic College for Women-cum-Hostel, Nandigama, while Polisetty Leela Sowjanya, Paruchuri Aditya and Uppu Kowsalya slept in the other rooms of the hostel. The petitioner was claimed to have entered into the college premises and to be lurking near the Western side grills door when Galeti Parvathi, mess worker, observed the same and informed Bezwada Venkateswara Rao, watchman, who in turn informed Kaki Koteswara Rao, another watchman. Both the watchmen went to the back side of Block-I hostel building carrying sticks, on seeing whom, the lurking person escaped, towards whom Bezwada Venkateswara Rao threw a stick, but it did not hit him. The person was stated to have proceeded to Block-II, opened the window planks from outside, picked up the powder tin and sprinkled it in the room. The charge-sheet further stated that at about 1 A.M. Bezwada Venkateswara Rao, watchman, found the windows of the 4th room of the hostel Block-II to be opened and alerted Galeti Parvathi, mess worker, who woke up Lavanya, Jyothi Prasanna, Krishna Veni and Nancharamma sleeping in the 4th room, who observed the powder scattered on the red colour plastic chair and steel plate near the second window. They left the room by locking it due to fear and on the next day they informed S. Venkateswara Rao, Incharge Principal, who gave report to the police. The charge-sheet further alleged the investigating officer to have conducted an observation Mahazar before mediators for the scene and the petitioner to have confessed this offence also in the presence of mediators-- Ayyadevara Naga Narasimham and Pamula Venkata Rama Narasimharao. Consequently, the petitioner is prosecuted for the offences punishable under Sections 450 and 457 of the Indian Penal Code read with Section 75 of the Indian Penal Code being an exconvict.

The memorandum of evidence attached to the charge-sheet shows that Galeti parvathi, Bezwada Venkateswara Rao and Kaki Koteswara Rao, the mess worker and the watchmen, were cited only to speak about the involvement of an unknown person, while none of the other witnesses can throw any light on the identity of the said unknown person. The mediators or the police personnel involved in the apprehension and the alleged confession of the petitioner, were not cited to speak about anything more than such apprehension and confession and the charge-sheet does not disclose the alleged confession of the petitioner of this crime to have led to the discovery of any fact to make any information from the petitioner leading to discovery of such fact admissible in evidence.

Though the crime was registered on 29-07-2008, the statements of the mess worker and the two watchmen were claimed to have been recorded only on 11-08-2008 and the possibility of identification of the petitioner by the said three witnesses directly in the Court is relied on by the learned public prosecutor as militating against quashing of the proceedings. The statements of the said three witnesses show that Galeti Parvathi claimed to have observed an unknown person near the grills door of the hostel while switching off the lights in the dining hall at about 11 P.M. and the said unknown person was claimed to have jumped the wall and escaped when the two watchmen who were alerted, went behind Block-I of the hostel. The three witnesses did not give any definitive descriptive particulars or identifiable physical features of the said unknown person. Galeti Parvathi was claimed to have stated that the said person was wearing stripes shirt and to be having lengthy hair. Bezwada Venkateswara Rao was claimed to have stated that the said person wore a pant and shirt and of a height of 5 feet 6 inches. Kaki Koteswara Rao was claimed to have stated that the unknown person was lean, was wearing a pant and shirt, had thick hair and of a height of 5 feet 6 inches. The description of the unknown person by these three witnesses who alone can be alleged to be having some possibility of identifying the culprit, thus, cannot be said to be stating anything about observing such features in the physical person of the unknown person in those few moments in that night as would make satisfactory identification of such person directly before the Court possible. If the unknown person was hiding behind grills door at about 11 P.M. and escaped by jumping over the wall on seeing the

approaching watchmen, the scope for the three witnesses making a satisfactory identification of that person does not appear quite natural. These three witnesses were not made to participate in any test identification parade to identify the petitioner. In view of the wide publication of the image of the petitioner in the print and electronic media since the petitioner was produced before the Court and when the petitioner would be alone standing in the dock before the Court at the time of trial when these three witnesses will be called upon to depose, even if any of or all the three witnesses claim the petitioner to be the unknown person referred to by them in their statements to the police, the same can never be considered as offering a reasonable basis for concluding any guilt beyond reasonable doubt without corroboration from any other circumstances. As the alleged confession of the petitioner before the police while in their custody did not lead to the discovery of any fact in so far as this case is concerned, the evidence sought to be produced before the Court even if produced in entirety does not appear sufficient to establish the link between the petitioner and the alleged incident. Apart from the alleged sprinkling of talcum powder in the room in which the girl students were claimed to be sleeping, itself appearing to be a purposeless act, the claims of the petitioner that there is no evidence against him worth acceptance except the inadmissible confession to link him with this crime, appear to deserve acceptance.

Cri.P. No.5662 of 2009 – C.C. No.2336 of 2008 – Crime No.153 of 2008:

The charge-sheet filed by the police stated that on 04-11-2007 Jupudi Naga Rani, Katti Kavitha, Dhuddu Tirupathamma, Jupudi Naga Lakshmi and other students were sleeping in the 4th room of Azaraiah hostel, Nandigama. The petitioner was claimed to have entered into the hostel by jumping the compound wall in the mid night and to have entered the 4th room at about 1.30 A.M. picking up a drainage spade to execute his plan of fulfilling his sexual lust using criminal force. He was claimed to have touched the leg of Jupudi Naga Rani and when she woke up, to have beaten her on the head with the drainage spade causing injuries and to have left the room leaving the spade. When the injured Naga Rani raised cries, the other students were claimed to have woken up and found Naga Rani with bleeding injuries and to have informed Kolagani Padma, wife of hostel warden--Kondala Rao, who informed Shaik Mastan, RMP doctor, who took Naga Rani to his clinic and gave treatment. The charge-sheet further stated that on information from warden, Kondala Rao, the Sub-Inspector of Police, Nandigama registered crime and examined the scene. The petitioner was claimed to have confessed this offence also before mediators on 16/17-08-2008 and the petitioner was claimed to have led the policy party and the mediators—Ayyadevara Naga Narasimham and Pamula Venkata Rama Narasimharao to the hostel and to have shown the drainage spade as the weapon with which he beat the girl, which was seized under mediators report. The petitioner was also claimed to have further stated that he entered into the same hostel on two more occasions. He was, hence, prosecuted for the offences punishable under Sections 450 and 324 of the Indian Penal Code read with Section 75 of the Indian Penal Code being an exconvict.

The memorandum of evidence attached to the charge-sheet shows that Jupudi Naga Rani, the injured/victim, was the only person who was claimed to have observed the unknown person who beat her. The report about the incident, which occurred on

04-11-2007, was claimed to have been given to the police by the warden only on 28-05-2008 and there was no attempt to explain the delay. The statement of Jupudi Naga Rani, the victim, was recorded only on 22-08-2008 by the police under Section 161 of the Code of Criminal Procedure much later to the apprehension and alleged confession of the petitioner leading to discovery of the drainage spade allegedly used in the crime. Jupudi Naga Rani was not made to identify the petitioner in any test identification parade and even in the statement of the said witness recorded on 22-08-2008 five days after the apprehension of the petitioner, she was said to be sleeping when she woke up at about 1.30 A.M. on feeling somebody touching her leg and she was claimed to have stated that at that time some unknown person beat her on the head with an iron object and when she raised cries, that person left the iron object there itself and escaped. Jupudi Naga Rani was further claimed to have stated that the iron object was observed to be a drainage spade and it was not stated in the charge-sheet or in the statement of Naga Rani as to what the victim or the other witnesses

did with iron object or why the drainage spade was not seized during the examination of the scene of offence by the Sub-Inspector of Police on registration of the crime. The delay was attempted to be explained in the statement of Naga Rani as due to her parents not agreeing to the attempt of the warden to register a case with the police. Why the parents of Naga Rani again conceded for giving the report on 28-05-2008 or why the warden gave the report at that time with or without the consent of the parents of Naga Rani, is unexplained and the statement of Naga Rani also attempted to claim that it became known to her that it was the petitioner who beat her in the hostel. How she came to know, is also unknown and the statement of Naga Rani did not refer to any descriptive particulars or marks or features of identification of the unknown person, which may enable her to identify such a person before the Court. If she suddenly woke up on somebody touching her leg and immediately an unidentified person beat her on the head with an iron object and escaped forthwith on her raising cries at about 1.30 A.M. in the mid night, any possibility of Naga Rani having scope for satisfactory identification of the said person does not appear natural or probable. Except Nagarani, there is no other witness who can link the petitioner with the offence and the drainage spade still being at the same place where the petitioner left it so as to be shown by him on 17-08-2008 to be recovered by the police before mediators, is such a claim which is artificial and unnatural on its face, more so when the spade was seen immediately after the incident by the victim and others as per her statement. In view of the statement of Jupudi Naga Rani referring to the information about the petitioner being the assailant, the wide publicity of the image of the petitioner received in print and electronic media since his production before the Court and the petitioner alone standing in the dock before the Court at the time of trial when the victim will be examined as a witness, make any possible identification of the petitioner by the victim Naga Rani before the Court not being acceptable as proof beyond reasonable doubt of the guilt of the petitioner. While Naga Rani was produced before Medical Officer, Government Hospital, Nandigama only after recording her statement on 22-08-2008, the delay in reporting to the police, the delay in examining Naga Rani, her statement to the police being devoid of any particulars as to make the identification of the petitioner possible and the unnaturality of recovery of the drainage spade said to have been in pursuance of the alleged confession of the petitioner, make the prosecution appear to be grossly inadequate to establish the guilt of the petitioner for any offence beyond reasonable doubt.

Crl.P. No.5660 of 2009 – C.C. No.2328 of 2008 – Crime No.241 of 2008:

The charge-sheet stated that on 09-08-2008 the petitioner entered the premises of Government Polytechnic College-cum-hostel, Nandigama by jumping the compound wall and entered into the dining hall by jumping the wall and when he was proceeding towards the stair-case, the watchmen—Kaki Koteswararao and Vallamkonda Venkata Narayana, saw him and raised cries. Kuncham Bhavani and Pesarlanka Nancharamma, who were coming down from first floor, also saw him and raised cries. The watchmen attempted to chase him, but the petitioner escaped by the same route and Mamidala Suseela, matron, also found the petitioner escaping. The unknown person was lurking in the shade of darkness and on information from the matron, the Sub-Divisional Police Officer and staff rushed there and were searching, when the petitioner, who committed theft of a torch light from inside of the window of the dining hall lurking at the cloth-wash boulders, was observed by PC 1612 and PC 1113. The charge-sheet claimed that the petitioner then escaped in spite of the attempt of the police constables to catch him, but he left his left leg footwear stuck in the slush due to rainfall. While jumping the compound wall, the petitioner had his fingers injured with the glass pieces and barbed fencing. The petitioner was claimed to have entered the same hostel ten days earlier on 28-07-2008, which is the subject matter of Crime No.224 of 2008. The charge-sheet further claimed that on registration of the crime, the Sub-Inspector of Police conducted observation mahazar of the scene and seized the left footwear of the petitioner. Later the petitioner was claimed to have confessed this offence also on the intervening night of 16/17-08-2008 and the right leg footwear of the petitioner and the torch light were claimed to have been recovered from the bushes behind the college at the instance of the petitioner under a mediators report before Pamula Venkata Rama Narasimharao and Ayyadevara Naga Narasimham. The Sub-Divisional Police Officer got the petitioner wear both the footwear which matched to

the feet of the petitioner, under a mediators report before the same mediators. The charge-sheet further stated that the matron identified the recovered torch light in the property identification parade before mediators and the injuries of the petitioner were examined by medical officer. The Judicial Magistrate of First Class, Jaggaiahpet conducted a test identification parade of the petitioner on the requisition of the Sub-Divisional Police Officer on 21-08-2008, during which the watchmen and Kuncham Bhavani and Pesarlanka Nancharamma identified the petitioner. Thus, the accused/petitioner was prosecuted for the offences punishable under Sections 450, 457 and 380 of the Indian Penal Code read with Section 75 of the Indian Penal Code being an exconvict.

Thus, four witnesses identified the petitioner in the test identification parade conducted by the Magistrate. The statements of Mamidala Suseela (L.W.1), Kaki Koteswararao (L.W.2), Vallamkonda Venkata Narayana (L.W.3), Kuncham Bhavani (L.W.4), Pesarlanka Nancharamma (L.W.5) and S. Anjani Kumari (L.W.6) said to have been recorded on 10-08-2008 by the police on the date of registration of the crime, themselves stated about the witnesses being specific that they can identify the person who intruded into their hostel. The alleged confession of the accused was also claimed to have led to recovery of his right chappal and torch light and the left chappal recovered at the scene under an observation report was claimed to have matched the right chappal seized at the instance of the petitioner and both the chappals were claimed to have matched to the feet of the petitioner, which was recorded under a mahazar. The recovered torch light was also claimed to have been identified by the matron in the property identification parade and thus, there are some facts which were discovered pursuant to the alleged confession of the petitioner, which, to the extent they are relevant and admissible in evidence, may provide some link between the petitioner and the alleged incident. Apart from such circumstantial evidence, the evidence of six eye witnesses, who claim that they can identify the culprit, out of whom four eye witnesses identified the petitioner during test identification parade by the Magistrate, indicates that the prosecution is not such as can be said not to disclose the complicity of the petitioner even prima facie and hence, liable to be thrown out at the inception. The witnesses cited and the documents and material objects produced by the prosecution deserve to be examined by the trial Court during trial for coming to a conclusion about the guilt or otherwise of the petitioner.

Cri.P. No.5650 of 2009 – P.R.C. No. of 2009 – Crime No.284 of 2007:

The charge-sheet said to be awaiting being taken on file by the Court, stated about the background of the petitioner and claimed that on the intervening night of 07/08-11-2007 after mid night, the petitioner jumped into the house of Marripudi Madhusudhanarao, opposite girls hostel of Krushi college, Nandigama and picked up a pestle and came out. On observing Inturi Triveni studying in the mess room, he waited at the first floor of a building under construction and after Triveni slept, the petitioner entered into the hostel by jumping the front compound wall at about 4 A.M. and reached the first floor of the building carrying the pestle and entered the iron grills mesh room where Vangapati Radha, Inturi Triveni, Abburi Rajitha and Saripineni Naga Rani were sleeping in a row. The petitioner was stated to have beaten Vangapati Radha with pestle over the head near left ear, on which she became unconscious. The petitioner was stated to have dragged Vangapati Radha up to water tap and to have removed pajama and underwear and silver anklets of Radha. He attempted to commit rape and as her legs were closing, he cut the neck of Radha and inflicted injuries on the lip and face with blade with anger. As in the meanwhile the hostel girls woke up, the petitioner escaped from the rear side by jumping the compound wall and threw the pestle into the well in the premises of Rayapati Apparao. The petitioner also was stated to have thrown the blade used on the road side. Inturi Triveni was stated to have heard moaning sound of Radha and after noticing after some time that Radha was missing from her bed, she woke up Popuri Ramya sleeping in the Southern room and the remaining girls were also woken up. They found Radha lying near the tap and the Advisor of the college B. Hanumantha Rao rushed to the hostel on knowing about the incident and on the advice of Dr. B. Narasimha Rao, Homoeo doctor, he took Radha to Dr. J. Sitharavamma from where Radha was taken to Andhra hostel, Vijayawada in an ambulance accompanied by B. Tirupatirao, lecturer, K. Suman, principal, Saripineni Naga

Rani and Poupri Ramya. The Sub-Inspector of Police registered the case on the report of the victim's father and seized the blood stained mat under scene of offence observation report before mediators.

The charge-sheet further alleged that Vangapati Radha, who recovered consciousness after four days, gave statement to the Sub-Inspector of Police in the presence of her father, B. Tirupati Rao, lecturer and duty doctor, when she claimed ignorance about the culprit and did not name anybody. Again on 15-11-2007 when the Sub-Inspector and the Mandal Executive Magistrate visited the hospital, Vangapati Radha stated in her statement to the Mandal Executive Magistrate that one Mahalakshmi and another unknown male person attacked her. She also gave a written report to that effect. She again gave another written report on 20-11-2007 stating the name of Pathuri Lakshmi Prasanna. The Circle Inspector of Police then took up investigation and when the Judicial Magistrate of First Class, Jaggaiahpet recorded the statement of Radha under Section 164 of the Code of Criminal Procedure, she stated about Pathuri Lakshmi Prasanna injuring her with the assistance of a male person. The Circle Inspector of Police altered the sections of law accordingly and arrested Pathuri Lakshmi Prasanna and K. Suman as accused 1 and 3 and produced them before the Court, while B. Hanumantha Rao and K. Nageswara Rao, Advisor and Correspondent of the college surrendered before the Court. Vangapati Radha was stated to have given another statement to the Circle Inspector on 16-02-2008 claiming one Gangadhar to be an accomplice in the commission of the offence and the statement of Radha was again recorded under Section 164 of the Code of Criminal Procedure by the Judicial Magistrate of First Class, Jaggaiahpet, in which she stated that Pathuri Lakshmi Prasanna and Gangadhar attempted to murder her. M. Gangadhar surrendered before the Court. While so, in the confession by the petitioner on the intervening night of 16/17-08-2008, he was claimed to have confessed this offence also and led the police and the mediators—Ayyadevara Naga Narasimham and Pamula Venkata Rama Narasimha Rao, to the house of Rayapati Apparao and showed the well where he threw the pestle. The pestle was recovered by a swimmer under a mediators report. The petitioner was then claimed to have led the police party to the shop of Yechuri Upendrarao with whom he pledged the anklets of Vangapati Radha, which were seized under mediators report. The petitioner was stated to have been remanded to judicial custody and the victim Vangapati Radha was stated to have identified the recovered anklets in the property identification parade before mediators, Gonela Mangaraju and Pamula Venkata Rama Narasimha Rao.

The Sub-Divisional Police Officer, who filed charge-sheet, hence, opined that the evidence of the witnesses, contradictions in the statements and reports of the victim, the circumstances of the case, the confession of the accused, the medical evidence and conclusions of the investigation show Pathuri Lakshmi Prasanna, M. Gangadhar, K. Suman, A. Nageswarao and B. Hanumantha Rao to have been proved to be innocent and hence, the petitioner alone was prosecuted for the offences punishable under Sections 450, 379, 307 and 376 read with Section 511 of the Indian Penal Code.

The material papers filed by the petitioner show that in the request for remand of Kamisetti Suman, Principal, Krushi Junior College, the Inspector of Police specifically stated about examining 22 witnesses including the victim and prima facie observing possible committal of offences punishable under Sections 307, 326 and 506 read with Section 34 and Section 201 of the Indian Penal Code by Pathuri Lakshmi Prasanna, Kamisetti Suman and the management of the college. Another accused M. Gangadhar obtained anticipatory bail from the Court. The copy of the statement under Section 164 of the Code of Criminal Procedure recorded by the Magistrate on 21-06-2008 shows that Vangapati Radha stated about Lakshmi Prasanna and M. Gangadhar making an attempt to murder her.

Another report given by her is to the same effect further stating that the innocent petitioner is falsely implicated in the crime.

Thus, it is seen from the charge-sheet and the other material on record that the victim Vangapati Radha since the moment she regained consciousness was specific about identifying the culprits though her versions were at variance from each other from time to time and she never named the petitioner as a suspect or culprit in any of her statements including those given to the Magistrate under Section 164 of the

Code of Criminal Procedure. Till the alleged confession of the petitioner on 16/17-08-2008, the investigating agency had admittedly no hint of any involvement of the petitioner in the alleged crime.

The statement of Inturi Triveni to the police, who was sleeping by the side of the victim Radha itself showed that in spite of hearing some sound and moaning of Radha, she did not see anything from inside the blanket and by the time she saw, Radha was not by her side. Therefore, there was no scope for Triveni being of any help in identifying the culprit.

The statements of Rayapati Apparao, D. Vinodh Babu Rao and Shaik Mohiddin about the recovery of the pestle from the well in the house of Rayapati Apparao are claimed to be about such recovery in pursuance of the confession of the petitioner and the statement of Yechuri Upendrarao about the petitioner pledging the anklets with him is also claimed to be in pursuance of the petitioner being observed by the said witness from his photos published in print and electronic media to be the person who pledged those anklets. The claims of the witness about the petitioner pledging the anklets with him and the witness handing over the anklets before mediators having voluntarily come to the office of the Sub-Divisional Police Officer, do not appear to have any other corroboration from the memorandum of evidence attached to the charge-sheet and the learned public prosecutor relies more on the recovery of anklets and the pestle, which, even if assumed to be providing some circumstantial evidence to implicate the petitioner, may not be, ex facie, sufficient to establish his guilt beyond reasonable doubt in the face of the specific claims of the victim herself about the persons involved and the innocence of the petitioner. None of the witnesses except the victim saw the culprit or culprits and how Pathuri Lakshmi Prasanna accused by the victim to be the culprit or some other witnesses came to know about the petitioner or his involvement as stated in the memorandum of evidence appended to the charge-sheet, is incomprehensible and unintelligible. The pestle being under water obviously did not leave any traces of physical evidence that can be collected from it to link it with the alleged offence and the conclusion of the investigating officer in the charge-sheet that the persons specifically named as culprits by the victim were proved to be innocent, ex facie, does not appear to such as can inspire confidence in a judicial mind. How what all was disclosed during investigation in depth till the apprehension of the petitioner on 16/17-08-2008, suddenly turned to be baseless and how the petitioner was confirmed to be the culprit notwithstanding the protests of the victim herself about the innocence of the petitioner, are matters which throw deep suspicions on the truthfulness of the prosecution version and the recovery of the anklets at the instance of the person with whom they were allegedly pledged by the petitioner and the recovery of the pestle from a well in somebody's house near the scene allegedly at the instance of the petitioner, can never provide sufficient circumstantial evidence to prove the guilt of the petitioner, as it is well settled that if a case is based on such circumstantial evidence, the circumstantial evidence should be so complete as to indicate the guilt of the accused alone and admit of no other possibility. As such, even if the prosecution case is accepted as it is at face value, these two recoveries contradicted by the claims of the victim herself about identified culprits and innocent petitioner cannot be the basis of any successful prosecution even if the proceedings were to be allowed to proceed further.

Crl.P. No.5645 of 2009 – P.R.C. No.18 of 2008 – Crime No.154 of 2008:

The charge-sheet stated that in the first week of February, 2007 after study hours, Damala Vani and Jarabala Kumari slept in the Western part of the shed in the hostel of Andhra Pradesh Social Welfare School for Girls, Nandigama and the petitioner stealthily entered into the hostel and laid down by the side of Damala Usha Rani when she was sleeping. He cut her Punjabi lower dress in the upper part on the left side with a blade and outraged her modesty. When Usha Rani woke up at about 1.30 A.M., she raised cries on observing the petitioner and the petitioner covering himself with a blanket escaped. The blanket fell down in the room and Damala Vani, Jarabala Kumari and other girls also woke up and raised cries. Madavath Sydulu, watchman and others rushed there and searched for the culprit, but in vain. The petitioner was stated to have trespassed into the hostel at mid nights four days earlier and ten days later also when he misbehaved with girl students when they were sleeping, and escaped when they raised cries. On the report of the Librarian P. Pulliah, the crime was registered. The petitioner was stated to have confessed this crime

also on 16/17-08-2008 before mediators and to have led the police party and the mediators to the outskirts of Mukkapati colony to show the place where he threw the blade which he used to cut the dress of Damala Usha Rani. The blade was not traced, but a mediators report was drafted. The scene was examined by the investigating officer and the report of the Librarian also complained about an attack against his daughter on 07-01-2008, which was undetected and then the attack on Damala Usha Rani, which was confessed by the accused. Hence, the accused was prosecuted for the second incident only under Sections 450 and 354 of the Indian Penal Code read with Section 75 of the Indian Penal Code, as he is an exconvict.

While the incident was allegedly in the first week of February, 2007, the report was given to the police on 29-05-2008 only and the charge-sheet does not even remotely attempt to explain any reasons for the delay. Leaving the alleged incident on 07-01-2008 against the daughter of the Librarian, who gave the report, as undetected, while the petitioner is being prosecuted for the second incident alleged in the report, is obviously only due to the alleged confession of the petitioner covering the second incident only according to the charge-sheet and the same is indicative probably of the absence of any other evidence for sustaining the prosecution apart from the alleged confession.

Though the accused/petitioner was stated to have taken the police party and the mediators to the place where he allegedly threw the blade used for cutting the dress of the victim, admittedly the blade was not traced there and consequently, no fact was discovered in pursuance of the alleged confession said to have been made while the petitioner was in the custody of the police and even that confession is now retracted.

Even after the belated registration of the crime, the statements of the witnesses appear to have been recorded only on 22-08-2008 and 31-08-2008 after the apprehension and alleged confession of the petitioner with no reasons for not recording such statements earlier. The statement of Damala Usha Rani, the victim, or the complaint or the statements of others did not specify the date or day of the incident in the first week of February, 2007. The statement of the victim stated about the victim having woken up at about 1.30 A.m., finding the lower left part of her Punjabi dress to have been cut by a few inches and an unknown person covering himself with a rose coloured blanket lying by her side. The victim stated that she was perturbed and shouted, on which the other students also woke up and saw that unknown person. She claimed that the unknown person escaped through the Eastern shutter, at which time he threw away the blanket, with which he was covering himself, on a box. The statement of Damala Vani, the elder sister of the victim, is that she woke up on hearing the cries of her sister and found a male person to be running away throwing a rose coloured blanket on the box. The statement of Jarabala Kumari is also to the effect that one unidentified male person ran away on seeing them throwing away a blanket on the box, when they woke up on hearing the cries of Usha Rani. If the unknown and unidentified person was covering himself with a blanket and threw it away only while running out through the Eastern shutter, the witnesses noting any features of identification or descriptive particulars of such person, does not appear quite possible. All the three witnesses were claimed to have stated that the said person was lean and wearing a pant and shirt, which is a too general description for claiming any possibility of the witnesses identifying such person later. All the three witnesses referred to the arrest of the petitioner in the case and the statements did not speak about the possibility of the said unidentified person and the petitioner being one and the same. The wide exposure to the identity of the petitioner through print and electronic media since his apprehension and production before the Court and his solitary presence in the dock during trial when the witnesses will be examined, make any possible identification by these three witnesses, of the petitioner before the Court not very convincing, more so in the absence of any conduct of a test identification parade of the petitioner for these witnesses. Even if the witnesses were to so identify the petitioner, in view of the various facts and circumstances referred to above, the same can never be considered sufficient to prove his guilt beyond all reasonable doubt and any continuance of the prosecution based on such material does not appear to serve the interests of justice.

Cri.P. No.5644 of 2009 – C.C. No.2334 of 2008 – Crime No.11 of 2008:

The charge-sheet stated that the petitioner was attending masonry works under a maistry Mellempudi Srinivasa Rao in the first week of January, 2008 and he went to the house of Thota Rama Devi on the instructions of maistry for bringing drinking water. The petitioner developed sexual desire against Rama Devi and he entered her house by scaling the wall at night after 8 P.M., but Rama Devi observed him when she came out and the petitioner escaped. On a later day, the petitioner picked up a crowbar at a cattle yard and concealed it at the new house under construction on the back side of the house of Rama Devi. On 08-01-2008 at about 7.15 P.M., the petitioner came to the house of Thota Ramadevi picking up the crowbar and when Rama Devi was standing looking towards the road side for her husband, the accused entered into the kitchen and beat Rama Devi on her head from behind with the crowbar. When Rama Devi bent to the front, the petitioner caught hold of her left hand asking her to come inside, but she raised cries, on which Thota Subba Rao, Jannu Gopi Krishna, yellamkonda Naga Srinu, Damala Krishna, Sayed Moulali and Alla Sujatha rushed there. The petitioner escaped and threw the crowbar in a lane near the house. Rama Devi informed the incident to her husband and she was treated at Dr. Syam Sunder hospital, Nandigama and Government hospital, Nandigama. The Sub-Inspector of Police visited the government hospital on intimation, recorded the statement of Rama Devi and registered the crime. He examined the scene also. The petitioner confessed this offence also on the intervening night of 16/17-08-2008 and at his instance the crowbar was seized near the house of Rama Devi under a mediators report in the presence of Ayyadevara Naga Narasimham and Pamula Venkata Rama Narasimharao. The Judicial Magistrate of First Class, Jaggaiahpet conducted a test identification parade, in which Rama Devi identified the petitioner. The petitioner was, hence, prosecuted for the offences punishable under Sections 450, 324 and 354 of the Indian Penal Code read with Section 75 of the Indian Penal code being an exconvict.

The statement of Rama Devi under Section 161 of the Code of Criminal Procedure recorded on 19-08-2008, of course after the apprehension of the petitioner, clearly stated that the assailant was moderate in complexion and of more height than her. She also stated that the said person wearing a pant and shirt with long hair, had irregular mustache. She further stated about the same person coming in the afternoon, two, three days earlier for drinking water and also hiding himself behind the house on the same night. She was specific that she can identify that person. Similarly, another eye witness Jannu Gopikrishna, who was examined earlier on

09-01-2008, stated about chasing the culprit and the culprit being lean and short. The statements of Damala Krishna and Sayed Moulali were to the same effect. The maistry Mellempudi Srinivasa Rao, whose statement was recorded on 20-08-2008 after apprehension of the petitioner, stated about the petitioner working under him and his sending the petitioner for fetching drinking water from the house of Rama Devi in the first week of January, 2008. Thus, apart from the alleged discovery of the crowbar in pursuance of the alleged confession of the petitioner, the victim positively identified the petitioner in the test identification parade and gave definitive information about the possibility of identifying him in her statement to the police. The statement of maistry to the police corroborates the claim of the petitioner casting his evil eye on Rama Devi when he first went to her house to fetch drinking water and the possibility of three other persons, who chased him, also identifying him during trial, cannot be ruled out. The prosecution of the petitioner, therefore, cannot be said to be, ex facie, unsustainable or to be only based on a retracted confession without the discovery of any fact and on no other material independent of the apprehension and confession, the bona fides of which are questioned by the petitioner. As there is other evidence on which the prosecution relies on, the case does not appear susceptible to quashing even before the trial on merits.

Crl.P. No.5640 of 2009 – C.C. No.2335 of 2008 – Crime No.152 of 2008:

The charge-sheet stated that the petitioner came to Saint Joseph's Orphanage Boarding Home/Don Bosco Girls Hostel, Nandigama in the mid night of second Saturday in November, 2006 and had broken the cement ventilator of the toilet with a crowbar. He trespassed into the hostel, went upstairs and entered the room where 8th class students were sleeping. He covered his body with a blanket and laid down between Kotcherla Aruna and Katarapu Sailaja with an intention to fulfill his sexual lust and outrage their modesty. In

the meanwhile, Jangam Kavitha, who woke up, went near the petitioner on suspicion, woke up Sailaja and Aruna and pulled the blanket covering the petitioner and found him in the illumination of bed light. When they raised cries, Gudise Venkata Ramana and Katarapu Koteswari observed the petitioner escaping from the room and entering another room where also the petitioner removed the blankets of the students. While escaping, the petitioner threw the crowbar near the school. Again on 29-12-2006, the petitioner entered the school compound, but could not break the cement ventilator, as the hostel inmates woke up. Again on the mid night of second Saturday in February, 2007, the petitioner had broken the cement ventilator of the toilet with an iron rod and entered the hostel, but could not enter the rooms, as the doors were bolted from inside. Then he committed theft of a sound box and took away the speaker. On the report from Sister Gopi Jacintha, the Sub-Inspector of Police registered the crime and the petitioner confessed this crime also on his apprehension on the intervening night of 16/17-08-2008. He led the police party and mediators to the backside of the hostel and showed the place where he threw the crowbar and stated that he threw away the speaker. The petitioner was, hence, prosecuted for the offences punishable under Sections 450, 354, 457 and 380 of the Indian Penal Code read with Section 75 of the Indian Penal Code, as he is an exconvict.

The statement of Jangam Kavitha recorded by the police under Section 161 of the Code of the Criminal Procedure states about her removing the blanket covering the culprit and seeing him and she described the person to be lean, wearing a shirt and pant with long hair and with 'prabhu mala' in the neck and a friendship band to the hand. She stated the age of the petitioner to be above 20 years and height to be about 5 feet 5 inches. She also claimed about the same person being seen while attempting to enter the hostel breaking the ventilator of the toilet on 29-12-2006. She stated to have seen the photos of the petitioner in the newspapers and about knowing the petitioner to be the person who entered the hostel. The statements of K. Aruna, K. Sailaja, G. Venkata Ramana and K. Koteswari were to the same effect. Though their statements were recorded only on 19-08-2008 two days after the apprehension of the petitioner about the alleged incidents at the end of 2006 and though the incidents were reported to the police only on 27-05-2008, the descriptive particulars of the assailant given by the five witnesses were definite and the possibility of these five witnesses observing the physical features of identification of the culprit is distinct. If these five witnesses had seen the aggressor in the illumination of bed light while he was lying and on Jangam Kavitha removing the blanket covering him and then the culprit got up and escaped from the room, it cannot be said that there was no reasonable and natural scope for these five witnesses to identify the culprit. The effect of delay in reporting to the police and the delay in recording the statements of the witnesses, more so only after the apprehension of the petitioner, are circumstances which the trial Court may keep in view in assessing the credibility and acceptability of the evidence to be placed before it, but when there is some plausible evidence collected during investigation independent of the alleged confession said to have been made by the petitioner to the police while in their custody, any quashing of the proceedings due to the failure of the investigating agency to conduct a test identification parade with these witnesses may be resorting to an extreme step. In contrast with the statements of the witnesses in other cases, which appear to be insufficient to probablise the possibility of acceptable identification of the petitioner before the Court by such witnesses, the statements of the witnesses recorded by the police in this case do not appear to deserve outright rejection without an opportunity for the prosecution to examine these witnesses before the Court during trial.

CrI.P. No.5636 of 2009 – P.R.C. No.27 of 2008 – Crime No.344 of 2007:

The charge-sheet stated that Boddu Vara Laxmi was watchwoman in S.C. Girls (Special) Welfare Hostel, Nehru Nagar, Nandigama and the petitioner attempted to enter the hostel twice earlier, but was obstructed by Vara Laxmi, who tried to catch him. The petitioner, therefore, intended to kill Vara Laxmi to remove the obstruction to his entry in the hostel to fulfill his sexual lust. The petitioner committed rape and murder of Ayesha Meera at Ibrahimpatnam a day earlier and on the intervening night of 27/28-12-2007 at about 1.30 A.M., the petitioner entered the hostel, picked up a pestle from the house of Mahankali Prakash by the side and beat Vara Laxmi with the pestle over the right eye brow, right forehead

and right temple when she was sleeping in the veranda of the hostel on a cot along with Sripadasetti Uma Maheswari. The petitioner bolted the doors of the student rooms from outside before the attack and beat Uma Maheswari on the head causing a severe injury. He then escaped throwing the pestle in the bushes and went away. Ballasa Rani, Mogilicherla Yamini, Kota Prameela, Bhuma Kalyani, Macha Jyothi, Pasupuleti Ratna Kumari, Nandru Radha Kumari, Thupakula Usharani and Merugumala Naga Lakshmi woke up and forcibly opening the doors of their rooms, came out and noticed the injured Vara Laxmi and Uma Maheswari. In the meanwhile on hearing the cries of the students, Veerla Nasaraiah, watchman, came there and Nommi Uma Hari Champaka, teacher, was also woken up by the students. Mahankali Prakash, the neighbour, conveyed it to Merugu Raju, the husband of the deceased and Monidi Ammani, Assistant Social Welfare Officer. They and other neighbours rushed there. The Sub-Inspector of Police recorded the statement of Ballasa Rani on receiving hospital intimation and the injured were referred to Government General Hospital, Vijayawada. Vara Laxmi succumbed to injuries on

01-01-2008 at N.R.I. hospital, Mangalagiri. The Sub-Inspector inspected the scene, seized the material objects of the scene and conducted inquest. Merugu Raju, the husband of the deceased, was arrested by the Inspector of Police under a mediators report and he was produced before the Court. However, the petitioner confessed this offence also on his apprehension on 16/17-08-2008 and led the police party and the witnesses--Challa Venkata Satyanarayana Rao and Gonela Mangaraju, to the water tank at the travellers bungalow, Nandigama and picked up the pestle from the bushes at the back of a house stating it to be the weapon of offence. It was seized under a panchanama. The investigating officer opined that the husband of the deceased, who was considered to be the culprit as per the investigation of the Inspector of Police, had nothing to do with the offence and hence, the accused was prosecuted for the offences punishable under Sections 450, 342, 307 and 302 of the Indian Penal Code.

Out of the material papers filed by the petitioner, the first information report shows that the deceased was unable to state anything as to what has happened when she was enquired immediately after the incident. The mediators report, dated

26-02-2008 is as though Merugu Raju, the husband of the deceased, attempted to escape on seeing the police and the mediators, from his house and he was claimed to have given voluntarily a confessional statement about killing his wife Boddu Vara Laxmi using an iron rod and incidentally a girl sleeping by the side of his wife also receiving a blow with the iron rod. He was claimed to have stated that he concealed the iron rod in the vacant space beyond the wall of Zilla Parishad High School. The mediators report further stated that Merugu Raju informed that he would show the iron rod to the police party and mediators if accompanying him. There was another mediators report of the same date for Merugu Raju showing the said iron rod at the place where it was concealed and the iron rod with blood stains being seized by the police before mediators. The report of the Forensic Science Laboratory shows that the blood stained clothes, chappals and iron rod were found to have blood of human origin on them though the blood group could not be determined. The remand report by the police clearly alleged that Merugu Raju was remanded as the accused concerned in the crime. The post-mortem report of Boddu Vara Laxmi shows the death to be due to head injury and Uma Maheswari also had received a grievous injury. The weapon used was opined to be a blunt object. This positive material collected during earlier investigation is relied on by the petitioner as improbabilising the claims of the prosecution about his involvement in the crime.

There was no direct witness to speak in support of the claims of the prosecution and even the injured witness Uma Maheswari did not see the culprit. Though it is sought to be contended that there is possibility of the said witness identifying the culprit before the Court, such possibility appears to be too remote and unreal. The memorandum of evidence attached to the charge-sheet shows that there was no witness cited who can identify the petitioner as the culprit and Merugu Raju, the husband of the deceased, is now turned into L.W.9 to state that his earlier confession before the Circle Inspector was due to fear. The only link between the petitioner and the crime is the recovery of pestle in pursuance of the alleged confession by the petitioner. The documents and material objects or the proposed oral evidence cannot, in any other manner, establish the guilt of the accused for the alleged offences beyond reasonable doubt even circumstantially

but for the pestle. The statement of Mahankali Prakash, the alleged owner of the pestle, recorded six days after the apprehension of the petitioner, is about the pestle missing since the incident, which was detected after two days and his identifying the pestle when the police brought it to him. The pestle missing from 27-12-2007 was, thus, allegedly recovered on 17-08-2008 at the same place where the petitioner allegedly kept it and admittedly Mahankali Prakash did not inform anybody about missing of the pestle since till its recovery as per his statement to the police. The police did not even attempt to conduct a property identification parade and at that distance of time there were no traces of any physical evidence left on the pestle to connect it with the crime. While the injuries sustained by the deceased and the injured with a blunt object could have been with a pestle or with an iron rod, even if the prosecution version is accepted at face value about recovery of the pestle as a fact discovered in pursuance of the retracted confession, the same is grossly insufficient in law to establish the alleged offences against the petitioner and therefore, the continuation of the prosecution on such evidence against the petitioner, more so in the light of the facts and circumstances disclosed by the earlier investigation implicating the husband of the deceased, will be an abuse of process of law.

Crl.P. No.5633 of 2009 – S.C. No.34 of 2009 – Crime No.477 of 2007:

The charge-sheet stated that on 27-2-2007 at about 2 A.M., the petitioner intruded into Sri Durga Ladies Hostel and gained entry into the room in the 6th block and found Ayesha Meera sleeping alone on the cot. The remaining inmates were sleeping in the adjacent rooms. The petitioner brought a chutney pounder from the house of Abburi Srinivasa Rao and forcibly hit Ayesha Meera causing a serious head injury. Then he lifted her from the cot and dragged her into the bathroom. He removed her clothes, tied her right leg to the water tap, bent her left leg and committed rape on her. Then he ransacked the articles of the deceased in her room, took Rs.500/- and some change, two pens and a pencil. He went back to the bathroom and wrote capital letter 'H' on the chest of the deceased and 'Prema Chirutha' in Telugu. He wrote a letter on the reverse of a non-judicial stamp paper found there requesting the ladies to forgive him for the murder and rape. He wrote some other words and then left the place. He threw the chutney pounder in front yard of the house of Abburi Srinivasa Rao and spent some time at the tea stall at Ibrahimpatnam ring center.

The charge-sheet, thus, stated that on 27-12-2007 at about 2 A.M. Ayesha Meera was murdered and raped by the petitioner in Sri Durga Ladies Hostel, West Ibrahimpatnam. I. Venkata Siva Rama Krishna informed the Assistant Sub-Inspector of Police, Ibrahimpatnam about the incident and P.C.365 was immediately sent to guard the scene. The Assistant Sub-Inspector immediately informed the Sub-Inspector, Inspector and Assistant Commissioner of Police over phone and the parents of the deceased were also informed over phone. The Inspector of Police obtained a report from the parents, written by K. Sandhyarani, teacher, and got the crime registered. The scene of offence was inspected, an observation report was drafted and material objects and physical evidence were collected from the scene including a partial foot print of the petitioner. The assistance of dog squad was also taken and an inquest was conducted over the dead body, in which it was opined that the deceased was struck on the head with blunt and heavy object. Post-mortem was also conducted and viscera, vaginal swabs, vaginal smears and pubic hair were preserved for analysis. The medical report opined that there was recent sexual intercourse and that the cause of death was head injury. The Assistant Commissioner of Police got polygraph tests and DNA tests conducted for several suspects, whose handwritings and foot print impressions were also compared with the samples collected from the scene. One Guruvindar Singh Anand alias Laddu was suspected because of similar crime history, but his DNA profile and handwritings did not match the DNA sample and writings of the offender. Hence, his name was deleted as an accused and on coming to know about the arrest of the petitioner and his confession on 16/17-08-2008 at Nandigama, the Assistant Commissioner of Police obtained a prison transfer warrant against the petitioner and on his production before the Court, police custody was obtained and the petitioner confessed voluntarily about murdering and raping Ayesha Meera. The petitioner took the police and mediators to the place where he kept the chutney pounder with which he

killed Ayesha Meera and the same was recovered in the front yard of the house of Abburi Srinivasa Rao under a mediators report. The sample handwritings of the petitioner were obtained before mediators at the Forensic Science Laboratory and similarly samples for DNA test and foot print comparison were also obtained. The experts opined about matching of DNA profile, handwritings and foot print impressions. The potency test conducted for the petitioner was positive and the medical experts opined that the death could have been caused with the chutney pounder. Hence, the petitioner is prosecuted for the offences punishable under Sections 302 and 376 of the Indian Penal Code.

The learned public prosecutor produced a copy of the order in Criminal M.P. No.1388 of 2008, dated 28-08-2008 by which the trial Court directed the Forensic Science Laboratory to obtain DNA samples, foot print impressions and sample handwritings of the petitioner to compare them with the material objects seized at the scene of offence. The learned Chief Metropolitan Magistrate opined the adoption of such scientific methods to be permissible and the further steps taken in pursuance of the said order are corroborated by the copies of relevant documents produced by the learned public prosecutor. The learned public prosecutor also produced the documents relating to the post-mortem of the deceased and the material objects originally sent to the Forensic Science Laboratory for analysis as well as the report of the expert about biological matching of the petitioner with the DNA profile of item Nos.9 and 10 cotton swabs and glass slides collected from the victim Syed Ayesha Meera. Similar were the reports relating to handwritings and comparison of the partial left foot print found at the scene and the test left foot prints collected from the petitioner.

It is true as seen from the material papers filed by the petitioner that one Guruvindar Singh Anand alias Laddu alias Babi was remanded to judicial custody at the instance of the police in this case on the allegation of existence of a prima facie case against him and his left foot print being favourably compared with the partial foot print obtained from the scene of offence. The polygraph test conducted on him was also stated to have disclosed that he withheld his responses to the questions put to him about his involvement in the offence. But it is clear that it was only on strong suspicion that his complicity in the offence was investigated into and the past criminal record of the said person also led the investigating agency to harbour such a suspicion. However, later the person was requested to be released from this case on 12-11-2008 much later to the apprehension of the petitioner herein and three witnesses were also permitted by the High Court in Criminal Revision Case Nos.459 and 460 of 2008 to be subjected to Narco Analysis Test. It is also true that the parents of the deceased filed a petition before IV Additional Chief Metropolitan Magistrate, Vijayawada referring to investigation into the case by the State Human Rights Commission, Mahila Commission and Minorities Commission, which aspects were not referred to by the investigating agency. The parents suspected five named persons to be involved in the crime. The parents complained of the various defects and deficiencies in the investigation by the police and requested for the real culprits being brought to book.

The parents of the victim were obviously only circumstantial witnesses and whether their suspicions are well founded or not, is a matter for investigation. The investigating officer himself states in the charge-sheet that several suspects were subjected to tests during investigation and that Guruvindar Singh Anand alias Laddu, who had similar crime history in the past, was strongly suspected earlier. The parents of the victim suspecting some others and the police subjecting many other suspects to the process of investigation earlier, by themselves cannot be concluded as unmistakably pointing out towards the innocence of the petitioner, though all these circumstances may be relevant for considering the credibility and acceptability of the prosecution version. The petitioner was claimed to have made a further confession during interrogation in this case leading to recovery of the chutney pounder from the front yard of the house of Abburi Srinivasa Rao in the presence of mediators and the chutney pounder so recovered as a fact discovered in pursuance of the alleged retracted confession before the police may not by itself be a strong convincing factor probalising the complicity of the petitioner, but the impact of the relevant and admissible portion of evidence in this regard on the appreciation of the accusations against the accused has to be necessarily assessed during trial. Though the chutney pounder not being alleged to have any traces of

blood or other physical evidence on it by the time of recovery, may also be a relevant circumstance, the distance of time between the incident and the recovery is also a factor influencing the assessment of the absence of such physical features or evidence.

While it is true that mere recovery of the chutney pounder in pursuance of an alleged confession of the petitioner, which is now retracted, by itself can never provide satisfactory proof by circumstantial evidence of the guilt of the petitioner, the expert opinion about the DNA samples, handwritings and foot prints also provide different facets of circumstantial probability of the involvement of the petitioner in the crime being relied on by the prosecution. Though the comparison of foot prints relating to Guruvindar Singh Anand also was stated to have broadly tallied, the same cannot belittle the comparison of the partial left foot print collected at the scene and the test left foot prints of the petitioner. While the past criminal record of Guruvindar Singh Anand, his responses in the lie detector test and comparability of his foot print may throw seeds of suspicion about his likely involvement in the crime, the investigating agency claims to have found nothing further to link him with the offence with reasonable certainty. The significant number of suspects including Guruvindar Singh Anand subjected to investigation by the police may only suggest that the police were struggling to find satisfactory leads in retracing the crime, the proof of which had to entirely depend upon circumstantial evidence alone in the absence of any direct evidence.

Even ignoring the alleged confession and recovery of chutney pounder thereunder, the memorandum of evidence appended to the charge-sheet shows that two witnesses, Avula Dhana Raju and Pannem Nagaraju were cited as L.Ws.17 and 18 to speak about the presence of the petitioner at their tea stall on the date of the offence. Apart from the tenant and owner of the house from where the chutney pounder was recovered, other witnesses were cited to speak about the past of the petitioner. Apart from the mediators for the alleged confessions of the petitioner, the experts to speak about the comparison of the handwritings, DNA samples and foot prints, were cited as witnesses. While the history of the petitioner repeated in every charge-sheet in all the above cases obviously wishing to have a psychological impact on the minds of those concerned, may not have any probative value in proving the involvement of the petitioner in any crime, the scientific evidence about the DNA samples, handwritings and foot prints can be claimed to be providing circumstantial corroboration to the possible involvement of the petitioner. His presence around at a tea stall at about the relevant time and discovery of any facts pursuant to his confessions also may become relevant circumstances for the effort of the prosecution to establish the guilt of the petitioner. Whether the chain of circumstances is so complete as to provide a continuous chain, which can admit of only the complicity of the petitioner and of no other theory, is for the trial Court to arrive at after the entire oral and documentary evidence is placed before it and the present case, notwithstanding the grave suspicions raised due to the allegations of the parents of the victim and the pursuit of so many suspects ending with Guruvindar Singh Anand and other circumstances relied on by the learned senior counsel for the petitioner, does not appear to be one which can be nullified in inception as not having even an iota of chance of successful prosecution of the petitioner. While it is true that the retracted confession of the petitioner alone could not have formed the basis for a successful prosecution, as there is other evidence on which the prosecution is relying on in this case, the criminal proceedings cannot be terminated prematurely.

While it is true that the apprehension of the petitioner and his alleged confessions and the alleged recoveries in pursuance of the confessions may have a trace of unnaturality and a semblance of artificiality, in this summary and restricted enquiry in a proceeding under Section 482 of the Code of Criminal Procedure, it has to be also said that there are no clear and undisputed circumstances to conclude any non-observance of the procedure by the police exercising their authority under the Code of Criminal Procedure to investigate, which, ex facie, vitiates the entire proceedings. Not that any objectionable features and infirmities leading to a legitimate grievance for the petitioner are totally absent, but such circumstances will be inadequate at the present stage in the present proceeding to conclude any unfair investigation with ulterior motives in transgression of the circumscribed limits bordering on illegality. While the petitioner may be able to justifiably prove prejudice to his personal liberty and human dignity by the transgression of circumscribed limits by the police ultimately at the end of the trial in each case, no such final determination

will be reasonable or just in these petitions as of now. Therefore, any final expression of opinion on such aspects is not attempted herein and it is suffice to state that any manifest malicious institution of the proceedings with ulterior mala fide motives for wreaking vengeance on the petitioner, is not presumed.

Still, as the allegations of the prosecution in the charge-sheets and the material referred to and relied on in the charge-sheets even if taken at face value and accepted in entirety do not suggest the possibility of even prima-facie establishing a case against the petitioner, five of these cases should fail even in these proceedings, while four of the cases should be allowed to continue till their logical conclusion after trials on merits. Where absurdity and inherent improbability are, ex facie, evident, it is concluded that there is no sufficient ground for proceeding against the petitioner, whereas in the cases where the facts and circumstances are to the opposite effect, the proceedings have to continue.

It should also be made clear that even in respect of the cases being quashed by virtue of the above conclusions, the same does not preclude the statutory investigating agency from taking any further action in accordance with law as enabled and permitted by the Code of Criminal Procedure.

It is further made clear that the further proceedings and trial in the other cases shall be uninfluenced by any observations made in this order.

Therefore, the Criminal Petition Nos.5636 of 2009; 5645 of 2009; 5650 of 2009; 5662 of 2009 and 5682 of 2009 are allowed and the further proceedings in P.R.C. No.27 of 2008; P.R.C.No.18 of 2008, Crime No.224 of 2008 (C.C. No.2370 of 2008); Crime No.284 of 2007 of Nandigama Police Station, Krishna District; and C.C. No.2336 of 2008 all on the file of Additional Judicial Magistrate of First Class, Nandigama are quashed; and the Criminal Petition Nos.5633 of 2009; 5640 of 2009; 5644 of 2009 and 5660 of 2009 are dismissed.

G. BHAVANI PRASAD, J

Date: 30-09-2009

Ksn/Svv

[\[1\]](#) AIR 1992 SUPREME COURT 604

[\[2\]](#) AIR 1966 Supreme Court 119