

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No. 9276 OF 2018**

**ORDER:**

This petition is filed under Section 482 of Cr.P.C. by the petitioners-accused Nos. 2 and 3 to quash the proceedings against them in crime No. 217 of 2018 of Humayunnagar Police Station, Hyderabad City, initially registered for the offences punishable under Sections 324 and 448 read with Section 34 of IPC, and later a memo was filed on 21-08-2018 before VI Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, seeking permission to convert the Section of law from 324 IPC to 326 IPC while maintaining the other provisions. Thus, as on today, the offences allegedly committed by the petitioners are punishable under Sections 326 and 448 read with Section 34 of IPC.

2. At the hearing, learned counsel for the petitioners has contended that since respondent No. 2 was allegedly beaten with a plastic pipe which is not a dangerous weapon used in causing injury, the offence would not fall within the ambit of Section 326 of IPC and that therefore alteration of Section of law from 324 IPC to 326 IPC is only to wreak vengeance against the petitioners at the instance of respondent No. 2.

3. Learned Public Prosecutor (T.S.) has opposed the petition.

4. Section 326 of IPC deals with punishment for voluntarily causing grievous hurt by dangerous weapons or means and according to it, whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means

of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The word any instrument which, used as a weapon of offence, is likely to cause death gains importance in the present case in view of the contention of learned counsel for the petitioners. Whether or not plastic pipe is a dangerous weapon is a question of fact to be decided during investigation since it depends upon weight and size and such disputed question of fact cannot be decided while exercising power under Section 482 of Cr.P.C. Therefore, it is not appropriate stage to quash the proceedings and the petition is liable to be dismissed. However, it is left open to the petitioners to raise this objection at appropriate stage.

5. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 31-08-2018.

JSK

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**M.SATYANARAYANA MURTHY, J.**