

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

Criminal Revision Case No.409 OF 2023

Between:

Syed Shah Hamed Saberi

... Petitioner

And

The State of Telangana

Through SHO, PS Banjara Hills,

rep. by Public Prosecutor and another. ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :05.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.R.C. No.409 of 2023

% Dated 05.01.2024

Syed Shah Hamed Saberi

... Petitioners

And

\$ The State of Telangana

Through SHO, PS Banjara Hills,

rep. by Public Prosecutor and another

Respondents/Complainants

! Counsel for the Petitioners: Sri K.Venumadhav

^ Counsel for the Respondents: Addl. Public Prosecutor for R1

Sri G.M.Mohiuddin for R2.

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL REVISION CASE No.409 of 2023****ORDER:**

1. This Criminal Revision Case is filed against order dated 02.12.2022 in CrI.M.P.No.1167 of 2022 in Crime No.468 of 2022 (now numbered as C.C.No.5900 of 2022) passed by the III Additional Chief Metropolitan Magistrate, Hyderabad for the offence under Sections 325 and 506 of IPC.

2. The 2nd respondent filed a complaint against this petitioner and another, alleging offences under Sections 325 and 506 of IPC. Complaint was filed on 13.06.2022 alleging that the 2nd respondent and this petitioner have purchased flat bearing No.202 in Classic Apartments situated at Road No.10, Banjara Hills, by way of joint investment. This petitioner was insisting that the amounts invested for the purchase of flat should be paid back to him. On 13.06.2022, it is alleged that this petitioner and his brother Ali Saberi asked the 2nd respondent to come to Silver Salt Restaurant. Ali Saberi picked up quarrel and attacked with sharp weapon with an

intention to kill him. Due to the assault by Ali Saberi (A2) he was shown as A2 in the complaint. According to the charge sheet filed, the attack was planned by this petitioner and executed by Ali Saberi. The said acts of Ali Saberi and this petitioner amount to offences punishable under Sections 325 and 506 of IPC, for which complaint was filed.

3. Though the complaint was filed against this petitioner and Ali Saberi, the police during the course of investigation found that it was Ali Saberi who called the 2nd respondent to Silver Salt Restaurant for settling the property disputes. After receiving the call from Ali Saberi, the 2nd respondent reached the spot. Then, Ali Saberi picked up quarrel and attacked with hands. Accordingly charge sheet was filed only against Ali Saberi.

4. Since the police did not array this petitioner as accused, protest petition was filed by the 2nd respondent. Having recorded the sworn statement of the 2nd respondent, learned Magistrate took cognizance of the offence under Section 109 r/w 325 and 506 of IPC against the petitioner by rejecting the

final report filed by the Investigating Officer to the extent of not finding this petitioner liable for the attack on the 2nd respondent.

5. Learned counsel appearing for the petitioner would submit that the learned Magistrate has not assigned any valid reasons for taking cognizance against this petitioner and issued summons.

6. It was further argued that this petitioner was not present at the time when the alleged incident had taken place. Except stating that this petitioner was also involved and at the instance of this petitioner, Ali Saberi had attacked, cannot form basis to direct the petitioner to undergo criminal trial.

7. On the other hand, learned counsel appearing for the 2nd respondent would submit that though the petitioner was not present at the scene, it was his plan to attack the 2nd respondent and accordingly, it was executed by Ali Saberi. If not being present at the scene, would form basis for not proceeding in a criminal case, any person, who intends to

commit an offence would stay away from the scene and hire persons to commit the offence. Merely not being present at the scene, it cannot be said that the petitioner was not responsible. Learned counsel further stated that at the time of concluding his argument that he intends to file written arguments, however, no written arguments were filed.

8. The police having investigated the case concluded that this petitioner was not present when the incident had taken place for which reason, proceedings were dropped against this petitioner and charge sheet was filed against Ali Saberi after examining CCTV footage and witnesses.

9. The only basis for including the petitioner as accused is the statement of the 2nd respondent that he received a call from the phone of Ali Saberi. However, this petitioner had also talked to him and asked him to come to Silver Salt Restaurant. Ali Saberi is the brother of this petitioner. Admittedly, the alleged call was received from Ali Saberi's phone and this petitioner was not present at the hotel where the complainant was attacked. It appears to be improbable

that the complainant was called to a public place like restaurant to be attacked and cause injuries and not a secluded place.

10. In the complaint and the statement made, it is mentioned that Ali Saberi picked up quarrel and attacked with a sharp weapon. Apparently, the alleged incident of attack was after a quarrel in between Ali Saberi and the complainant. The consequence of the quarrel was attack by Ali Saberi. In the said circumstances, only for the reason of the complainant stating that the petitioner had talked to him after Ali Saberi had called him, cannot form basis to prosecute the petitioner for the offence under Section 325 r/w 109 of IPC.

11. Abetment is an act of instigating any person to do a thing or engaging with one or more persons in conspiracy and in pursuance of such conspiracy doing such thing. Further, intentional aiding by any act or illegal omission in doing such thing amounts to abetment as defined under Section 107 of IPC.

12. Section 109 IPC enables punishment for abetment and applies though the abettor is not present at the scene. However, as narrated by the complainant, Ali Saberi picked up quarrel in the hotel and consequently there was an attack. The attack was a result of quarrel at the hotel in between Ali Saberi and the Complainant, as such, it cannot be said that this petitioner had instigated or engaged or intentionally aided the said Ali Saberi to attack the complainant.

13. It is not the case that the petitioner had criminally intimidated the complainant at the time of alleged conversation on phone, as such, the offence under Section 506 of IPC is not attracted.

14. For the above discussed reasons, the petitioner succeeds and proceedings against him are liable to be quashed.

15. In the result, the proceedings against the petitioner/A2 in Crime No.468 of 2022 and consequent C.C No.5900 of 2022 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed. Consequently, the impugned

order dated 02.12.2022 in Cr1.M.P.No.1167 of 2022 in
Cr.No.468 of 2022 is set aside.

16. Criminal Revision Petition is allowed.

K.SURENDER, J

Date : 05.01.2024

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE No.409 of 2023
Dt.05.01.2024

kvs