

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.794 of 2013

Between :-

B.Janardhan Reddy and another .. Petitioners

and

State of A.P.,
Rep.by Public Prosecutor,
High Court, Hyderabad and another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 12th August, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | No |
| 3. Whether His Lordship wish to see
the fair copy of the Judgment? | No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.794 of 2013

ORDER:-

This case is filed under Sections 397 and 401 Cr.P.C., questioning the action of the learned Judicial Magistrate of First Class, Tandur, in taking cognizance of a private complaint filed by the 2nd respondent/*de facto* complainant.

2. The facts in brief are as under:-

The petitioners are shown as A.1 and A.3 in the private complaint. The 2nd respondent is the *de facto* complainant. The complainant and A.3 were classmates and old friends. Both the accused are practicing Advocates in the Court of Judicial Magistrate of First Class, Tandur. The complainant is running a beauty parlour in Tandur. When the petitioners/accused are residing in one portion of the building, the *de facto* complainant is residing in another portion and she is carrying on her business. The friendship in between the complainant and A.3 turned sour due to certain business rivalries. It is alleged that the petitioner/A.3 was demanding some money from out of the income of the *de facto* complainant and even threatening her. It is alleged that when the amounts were not being paid, the petitioner/A.3 along with others started a bad propaganda in the town that the *de facto* complainant under the guise of a beauty parlour is running prostitution by luring the innocent women in the town. The complainant refers to several instances in between both the people. The specific allegation insofar as the present case is concerned is that on 31-08-2012 at about 09.00 p.m., when the complainant was not in the house, the petitioners/accused along with two others quarrelled with the mother and sister of the complainant and beat them. It is alleged that both the women were dragged and assaulted and in that process, the petitioner/A.1 has touched her sister Sujata indecently and thereby committed the offences. This incident is said to have taken place on 31-08-2012.

3. On the other hand, the contention of the petitioners/accused is that

the complainant is a cantankerous and vexatious litigant and has been in the habit of doing illegal things and blackmailing people and extracting money. Several acts of omission and commission on the part of the complainant are alleged. Alleging that the *de facto* complainant has telephoned to the petitioner/A.1 and demanding certain money and threatened that if the demand is not met, she will implicate him in false cases. The petitioner/A.1 filed a complaint with the police, which registered the same against the complainant as Cr.No.154 of 2012 under Sections 384 and 506 IPC., as a counterblast to that complaint. It is alleged that the *de facto* complainant filed the present complaint on 12-09-2012 alleging the offence that is said to have taken place on 31-08-2012.

4. Originally, the complaint of the complainant was registered as Cr.No.158 of 2012 under Sections 354, 323 and 506 read with 34 IPC., and the F.I.R. was issued. After completing the investigation, the Investigating Officer has filed a final report on 07-12-2012 stating that the complaint of the complainant lacks evidence and hence charge sheet cannot be filed. The Investigating Officer, in his final report, observe that the complaint of the complainant is based on hearsay evidence, that the so-called victim is her sister Sujata who did not lodge any complaint, that as per the out-patient sheet of Sujata who was admitted in the hospital, it is recorded that she was suffering with anxiety and that the investigation revealed that the present complaint is filed as a counterblast to the complaint lodged by the petitioner/A.1, which was registered on 04-09-2012. It is further held that the present complaint of the complainant is filed 12 days after the alleged incident.

5. After receipt of the notice of the final report, the *de facto* complainant filed the Protest Petition which was registered as CrI.S.R.No.3633 of 2013. The learned Magistrate conducted investigation and after recording the statements of the complainant, her sister, mother and three others, the learned Magistrate by order dated 13-03-2013, took cognizance of the case only against A.1 and A.3 and registered the same as PRC No.12 of

2013.

6. The present revision is filed by the petitioners questioning the orders of the learned Magistrate taking cognizance of the complaint filed by the *de facto* complainant.

7. The contention of the petitioners/accused is that the record clearly discloses that the petitioners/accused had been in active social service in the town and the *de facto* complainant is indulging in certain activities which are highly objectionable. The police as well as the people in the town have been subjected to harassment at the hands of the *de facto* complainant, who taking advantage of she being a woman is blackmailing people by developing illegal contacts with several people including a former S.I. of Police in the jurisdictional Police Station. The contention of the petitioners/accused is that even the Superintendent of Police caused enquiries into the activities of the *de facto* complainant and submitted the reports to the superior Police Officers and also the Human Rights Commission which clearly shows that the *de facto* complainant is indulging in several illegal activities and as a matter of fact, she is involved in several crimes. The Superintendent of Police in the report submitted to the Human Rights Commission has referred to Cr.Nos.21/2002, 194/2010, 202/2010, 208/2010, 86/2011, 85/2011, 75/2012, 191/2012, 192/2012 and 148/2013 in support of the report that the *de facto* complainant has been in the habit of filing false complaints against several persons. The learned Counsel appearing for the petitioners/accused placed reliance upon a decision of the Supreme Court reported in **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS**^[1] wherein the Supreme Court laid down the following principles:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) 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 grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings 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.

(7) 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."

8. Learned Counsel appearing for the petitioners/accused submits that point No.7, which is stated by the Supreme Court, is attracted to the case in hand. It is manifest from the record, according to the Counsel, that the criminal proceeding is manifestly attended with *mala fide* and malicious intention with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. On the other hand, learned Counsel appearing for the *de facto* complainant submits that the *de facto* complainant had been subjected to harassment by both the petitioners/accused who are husband and wife and practicing Advocates in the town. The petitioners/accused have developed grudge against the *de facto* complainant after she also became politically active and became the President of Women's Rights

Welfare Organization. It is contended that the petitioners/accused started a bad propaganda about the *de facto* complainant unable to digest the prosperous business of the *de facto* complainant and started rumours in the town that under the guise of running a beauty parlour, the *de facto* complainant is carrying on illegal activities in the said premises. Several incidents took place in between the two families who were residing in the same building. Learned Counsel submits that the petitioners/accused were also politically active and therefore they want to see that the reputation of the *de facto* complainant is completely tarnished in the town and the business is adversely affected. Insofar as the incident is concerned, the specific contention of the *de facto* complainant is that on 31-08-2012, the incident alleged has taken place and it was witnessed by several people. The police people in collusion with the petitioners/accused, who are the practising Advocate and politically active, have submitted a false report to the Court stating that the complaint lodged by the *de facto* complainant is false. It is submitted that the complaint that is filed by the petitioners/accused on 04-09-2012 has been registered and that is being investigated by the police. However, the complaint which the *de facto* complainant lodged on 12-09-2012 has been referred as false. The complaint was treated as such merely because it was filed 12 days after the incident and that the medical record shows that the sister of the *de facto* by name Sujata was admitted in the hospital due to anxiety but not with any other complaint.

10. Learned Counsel appearing for the *de facto* complainant relies upon the following authorities in support of his contention that at this stage the roving enquiry cannot be made and suffice if the learned Magistrate is *prima facie* satisfied about the allegations made and put the case to trial.

11. In **THOTA PAPI REDDY AND OTHERS v. GUDALLI YELLAIAH**

AND ANOTHER ^[2] this Court observed as under:-

“The jurisdiction, exercised by the Magistrate in taking cognizance of an offence, is discretionary. The Magistrate, while taking cognizance, is only required to satisfy himself as to

whether there were sufficient grounds for proceeding against the accused and not as to whether there were sufficient grounds for conviction. This sufficiency is required to be judged on the solemn affirmation of the complainant and the evidence, if any, on record. The defence of the accused is not required to be taken into consideration. While taking cognizance of an offence the learned Magistrate is not required to carefully sift evidence and find out, on critical appreciation, if the statements are true or not. Failure by the Magistrate, to take into consideration the statement of witnesses recorded during the course of investigation or the Investigating Officer's conclusion that the accused had not committed the offences alleged against them, is therefore of no consequence – Since the learned Magistrate has the discretion to take cognizance of the offence under Section 190(1)(a) Cr.P.C., on the basis of the complaint/protest petition, after examination on oath of the complainant, and as he was satisfied that a *prima facie* case of an offence having been committed had been made out, non-examination of witnesses would not justify interference by this Court, under Section 482 Cr.P.C.”

12. There is no dispute with regard to the legal position that the criminal prosecution is a serious matter and the Courts have to be very cautious when either registering the cases or closing the same. It is the duty of the Court to uphold the basic rights of both the victim of an offence as well as the accused persons. When false complaints should not be entertained, at the same time, at the threshold a complaint cannot be thrown out on the ground that it is false. At this stage, what is required to be seen is as to whether a bare reading of the complaint *prima facie* makes out a triable case against the accused and whether the accused should be made to face the trial or can be saved of the rigours of criminal trial. In the instant case, there is voluminous record to show that both the parties viz., the petitioners/accused and the *de facto* complainant have been indulging in several complaints against one another. The record, no doubt, shows that the *de facto* complainant had been filing several complaints against several persons. As a matter of fact, an order of the learned Asst.Sessions Judge, Vikarabad, Ranga Reddy District, dated 04-12-2012 in S.C.No.43 of 2012 has been produced, in which one Shaik Maqsood Sajid was an accused and the *de facto* complainant herein was

the victim. In that complaint also allegations punishable under Sections 354, 324 and 506 IPC., were made by the *de facto* complainant herein against the said Maqsood Sajid. By the said Judgment, the learned Assistant Sessions Judge has directed launching of the prosecution against the *de facto* complainant herein, who was examined as PW.1 in that Sessions Case for having given false complaint before the police. A show-cause notice is issued to the *de facto* complainant by the Assistant Sessions Court. Learned Counsel appearing for the petitioners/accused by referring to the report of the Superintendent of Police and the observations of the Courts, submits that it is manifest that the *de facto* complainant is in the habit of filing false complaints alleging offence under Section 354 IPC., with an intention to extract money from the people in the town.

13. In the instant case, what is required to be seen is as to whether the *de facto* complainant has produced *prima facie* evidence before the Magistrate to proceed with the case or whether absolutely there was no material for the learned Magistrate to take cognizance of the complaint. The past conduct of the *de facto* complainant howsoever adverse it may be cannot be taken as a ground to throw out her complaint if there is sufficient material placed on record to proceed against the accused.

14. As already, noticed the specific allegation of the *de facto* complainant is that on 31-08-2012 at about 09.00 p.m., when she was not in the house, the petitioners/accused being husband and wife, along with two others, entered into the portion in occupation of the complainant and started abusing the mother and sister of the complainant. It is alleged that the persons have dragged her sister by holding the tuft, beat and abused them and in that process the petitioner/A.1 also behaved indecently with her sister Sujata who was an unmarried girl, aged about 23 years. The police, no doubt, has filed a final report saying that this complaint is a counterblast to the earlier complaint filed by the petitioner/A.1 on 04-09-2012. Protesting the said final report, the *de facto* complainant filed the present petition and has examined herself as witness No.1 and also

examined her sister, one Laxmi, Subhash @ Ravi, Anil Singh Taqur and Padmamma (mother of the complainant and victim) as the witnesses. After taking into consideration the sworn statements of the *de facto* complainant, the victim, their mother and three other witnesses, the learned Magistrate directed taking of the cognizance against the petitioners/A.1 and A.3 only. A perusal of the complaint and the sworn statements that are produced *prima facie* show that there is material against the accused which needs to be tried. The evidence that is produced before the Court is sufficient to take the cognizance and at this stage, it is not proper to adjudicate upon the truthfulness or otherwise of the material that is produced before the Court. Needless to say that ultimately if after full-fledged trial the Court finds that the complaint of the complainant is utterly false, vexatious or malicious, there is provision for taking action against her as has already been done in S.C.No.43 of 2012 on the file of the learned Assistant Sessions Judge, Vikarabad, Ranga Reddy District, by order, dated 04-12-2014, wherein a notice has been issued to the *de facto* complainant herein and therein to show cause as to why action should not be taken against her for lodging a false complaint.

15. In that view of the matter, I feel that the learned Magistrate is justified in taking cognizance of the complaint insofar the petitioners/A.1 and A.3 are concerned. There are no merits in the petition to quash the proceedings and hence the same is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

12th August, 2015
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[1] 1992 Supp (1) SCC 335

[2] CDJ 2006 APHC 1030