

HON'BLE SMT JUSTICE ANIS
CRIMINAL PETITION No.7998 OF 2012

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), seeking to quash the proceedings against the petitioner-accused in C.C.No.222 of 2012 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, for the offences punishable under Sections 448, 352, 427 and 506(2) of the Indian Penal Code, 1860 (for short 'I.P.C').

2. The brief facts of the case is that respondent No.2 filed a private complaint against the petitioner before the Additional Judicial Magistrate of First Class, Vizianagaram, stating that she was the auction purchaser of lease hold rights of shop room Nos. 16, 17 & 22 of I.D.S.M.T. shopping complex of the Vizianagaram Municipality adjoining to the Municipal Office, Vizianagaram, along with one Chekuri Venkatachalam her partner. They have participated in the auction conducted on 05.08.2010 and became the highest bidder of shop No.16 and they have deposited Rs.1,00,000/- for the said shop and agreed to pay the rent of Rs.3,420/- p.m. Same was published in Sakshi Telugu newspaper dated 06.08.2010. Whiles, a notice in R.C.No.27-65/2003/1 dated 22.08.2010 was issued to respondent No.2 stating that municipal rent is fixed for Rs.7,942/- contrary to the information furnished in the paper notification dated 06.08.2010. The second respondent got issued a legal notice dated 22.10.2010 to the Municipal Commissioner, Vizianagaram Municipality, stating that she is not willing to pay the enhanced amount and also to cancel shop room No.16 and to refund the sum of Rs.1,00,000/- deposited by her. The second respondent in the complaint also stated that on 27.10.2010 at about 05:30 p.m, the petitioner along with municipal staff trespassed into shop room No.16, abused her in filthy language and threatened the lady workers to go out of the shop and damaged the stock in trade, despite the protest made by her without

giving any notice to close the shop. Hence, she lodged a complaint before the Station House Officer, II Town Police Station, Vizianagaram, on 27.10.2010. But no action has been taken requesting the matter to refer for investigation and report. As the police have not registered the complaint given by the second respondent, she filed a private complaint and the same was numbered as C.C.No.222 of 2012.

3. The petitioner contended that he never committed any alleged offence and he is innocent and the facts mentioned in the complaint are false and baseless and created for the purpose of this case. According to the petitioner, on 05.08.2010, the Municipality Vizianagaram, conducted an auction for the lease hold rights of shops in I.D.S.M.T shopping complex through public auction by fixing the Government rate per Square Feet @ Rs.35/- and other conditions of the auction. As per the conditions, the participants shall produce a solvency certificate issued by the Tahsildar for Rs.1,00,000/- and if he cannot produce the same, he has to deposit Rs.1,00,000/- cash in lieu of the solvency certificate, with the municipality and also deposit Rs.15,000/- as auction deposit before participating in the auction. After becoming the successful bidder, he has to pay Rs.1,00,000/- towards good will, which is non-refundable and shall also deposit six months rent in advance. The auction purchaser has to deposit the required fee for stamp duty and registration of lease deed and these rules and regulations were specifically published in the district Gazette No.41/10/A8 dated 02.03.2010. The second respondent having thorough knowledge about the same, participated in the auction and became successful bidder for shop Nos.16 and 22, and shop No.16 comprising of total extent of 209 Sq. Feet is knocked down for Rs.38/- per Sq. Feet in favour of respondent No.2 and she has to pay a monthly rent of Rs.7,942/-.

The Municipal council has resolved vide its resolution No.125 dated 12.08.2010, the confirmation of auction in favour of respondent No.2 in respect of shop room Nos.16 & 22 and also issued a notice dated

12.08.2010 intimating the monthly rent of other payments which shall be paid by the second respondent. On 24.08.2010, another notice was issued demanding the second respondent to pay the good will advance etc. When she failed to pay the same, a final notice was issued on 05.10.2010 demanding the second respondent to pay good will amount of Rs.1,00,000/- and Rs.32,652/- towards six months deposit and for registration of the lease deed as Rs.7,150/- within three days. Though the notice was served on second respondent, no payment was made and filed the false complaint to harass the petitioner. At that time, the petitioner was working as Revenue Inspector, Vizianagaram Municipality. The petitioner also stated that second respondent already filed a civil suit on the file of Senior Civil Judge, Visakhapatnam, against the petitioner and the Commissioner, Municipality, Vizianagaram in O.S.No.21 of 2011 for perpetual injunction and the same is pending. It is also stated that the petitioner is a public servant. Before taking cognizance of the alleged offence, previous sanction from the State Government should be taken as contemplated under Section 197 of the Criminal Procedure Code, 1973 (for short 'Cr.P.C'). Therefore, petitioner prayed the Court to quash the proceedings in C.C.No.222 of 2012 on the file of the Judicial Magistrate of First Class, Vizianagaram.

4. The learned counsel for the petitioner argued that the petitioner was working as Revenue Inspector, Vizianagaram Municipality and stated that Municipality conducted auction for the shop room Nos.16, 17 & 22 situated in I.D.S.M.T shopping complex and the second respondent participated in the auction and became the highest bidder for shop No.22 along with shop room No.16; that shop room No.16, which was comprised in total extent of 209 Sq. Feet is knocked down @ Rs.38/- per Sq. Feet in favour of the second respondent. Accordingly, the second respondent has to pay the monthly rent of Rs.7,942/-. Similarly, she became the highest bidder in respect of shop room No.22 and same was knocked down for Rs.78/- per Sq. Feet. Accordingly, the second

respondent has to pay monthly rent of Rs.16,302/-. When the second respondent failed to pay the monthly rent, notices were issued to the second respondent and in spite of that, she did not pay the amount. On 05.10.2010, a final notice was also issued to the second respondent asking her to pay the arrears as mentioned in the said notice. But, the second respondent failed to pay the same even after receiving the notice and filed the present false complaint. Petitioner is the public servant and not acted in his personal capacity and the allegations mentioned in the petition are false and concocted for the purpose of criminal case. It is also argued that already the second respondent filed O.S.No.21 of 2011 for perpetual injunction and the same is pending before the Court of Senior Civil Judge, Vizianagaram, against the Municipality, Vizianagaram, therefore, prayed the Court to quash the proceeding in C.C.No.222 of 2012 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram.

5. On the other hand, notice to the second respondent was served, but no representation was made.

6. Heard the Public Prosecutor for the State of Andhra Pradesh, who clearly stated that the Municipality issued notices to the complainant on various dates i.e., on 12.08.2010, 24.08.2010 and 05.10.2010.

7. Now, the point for determination is:

Whether the petitioner has made out any valid or sufficient grounds for quashing the proceedings in C.C.No.222 of 2012 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, against him as prayed for or not?

8. **P O I N T:** From a perusal of the contents of the petition and the copy of complaint given by the second respondent in C.C.No.222 of 2012, it is an admitted fact that Vizianagaram Municipality is the absolute owner of Shop room Nos.16, 17 & 22 of I.D.S.M.T shopping complex,

near clock tower, Vizianagaram, which is the main commercial area situated in the heart of the city. The Municipality, Vizianagaram, conducted auction for the lease hold rights of the shops in I.D.S.M.T shopping complex on 05.08.2010 through public auction by fixing the starting Government rate for Sq. Feet @ Rs.35/-. The other conditions are that the participant shall produce the solvency certificate issued by the concerned Tahsildar for Rs.1,00,000/-. If he cannot produce the solvency certificate, he has to deposit Rs.1,00,000/- in lieu of the solvency certificate. At the time of participation of the auction, they shall deposit Rs.15,000/- as auction deposit. After becoming successful bidder, one has to pay Rs.1,00,000/- towards goodwill, which is non-refundable and also shall deposit six months rent in advance. The auction purchaser has to deposit the required fee for stamp duty for registration of the lease deed. These rules and regulations and terms and conditions of the auction were specifically published in the district Gazette No.41/10/A8 dated 02.03.2010. The petitioner was working as Revenue Inspector, Vizianagaram Municipality during that time. It is also an admitted fact that second respondent participated in the auction and became the highest bidder in respect of shop room Nos.16 & 22. Shop No.16 is knocked down for Rs.38/- per Sq. Feet and shop No.22 is knocked down for Rs.78/- per Sq. Feet in favour of the second respondent. The Municipal Council, Vizianagaram, has resolved vide its resolution No.125 dated 12.08.2010 confirming the auction in favour of the second respondent in respect of shop Nos.16 & 22. It is also an admitted fact that prior to filing of the private complaint in C.C.No.222 of 2012, the second respondent filed O.S.No.21 of 2011 against the Commissioner, Municipality, Vizianagaram and the Revenue Officer Municipality by name

K. Srinivasarao/petitioner herein. The said suit O.S.No.21 of 2011 on the file of the Senior Civil Judge's Court, Vizianagaram, is filed by the second respondent seeking grant of permanent injunction restraining the defendants therein from interfering with the peaceful possession and

enjoyment of the plaint schedule shop Nos.17 & 22. In that suit, the defendants 1 & 2-Vizianagaram Municipality represented by the Commissioner and the petitioner herein filed the written statement.

9. The contention of the petitioner is that the Municipality, Vizianagaram, issued notices to the second respondent on 12.08.2010, 24.08.2010 and 05.10.2010 demanding the second respondent to pay the goodwill amount of Rs.1,00,000/-, six months deposit of rent and amount of registration for lease deed within three days and in that said notice, it was mentioned in case if the second respondent failed to pay the same within time, they will lock the shop. Even after receiving the notice, the second respondent failed to pay the same and became a defaulter, and filed the false complaint. To support these facts, the petitioner filed the copy of notices. Admittedly, the petitioner is a public servant and the second respondent has not sought any sanction from the Government and petitioner has not discharged the duties in his private capacity, but discharged his official duties as per the directions of his superior. The second respondent already filed a civil suit for injunction against the Vizianagaram Municipality and the petitioner herein. Therefore, in view of the facts and circumstances of the case, I am of the view that the continuation of the criminal proceedings against the petitioner in C.C.No.222 of 2012 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, is nothing but abuse of process of law and the said proceedings has to be quashed.

10. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner-accused in C.C.No.222 of 2012 on the file of the Additional Judicial Magistrate of First Class, Vizianagaram, for the offences punishable under Sections 448, 352, 427 and 506(2) I.P.C.

11. The miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

Date: 12.03.2015

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