

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.P.No.6867 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner-accused to call for the records in C.C.No.555 of 2014 on the file of the IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam and quash the same.

2. The petitioner is the sole accused in C.C.No.555 of 2014 for the offences punishable under Section 506, 509 and 290 of I.P.C. which is outcome of the report of the 2nd respondent/ defacto-complainant-Administrative Officer(for short, 'the A.O.') of Bharath Institute of Technology(for short, 'the BIT') Bagh Amberpet, Hyderabad vide Cr.No.269 of 2014 of Ibrahimpatnam Police Station. The brief facts of the prosecution case for the offences supra that was taken cognizance by the learned Magistrate from the police final report after investigation, are that on 22.07.2014 at about 11.30 A.M., the defacto-complainant being the A.O. of the BIT, submitted written report that on 18.07.2014 at 15.30 hours the accused resident of Ramanthapur of Adilabad district, a student of Pharm-D VI Year, came to the college for depositing college fee and while he was returning from college at the college main gate he was stopped by the security personnel for not having gate pass for which he scolded the security personnel and also immediately rushed to the A.O. office and having argued and altercated abused the A.O, who is a lady in filthy language by threatening with dire consequences as to defame her character as well as the name and fame of the college and somehow her colleagues Mukesh-Office Assistant L.W.3 and one Naresh taken him out, and sought the police to take action. From which the crime is registered and investigated and in the course of investigation, it revealed that the accusation is correct and that earlier also the petitioner/accused in the year 2013 created nuisance in the classroom and the issue was settled down keeping his future in view and even many a time he was given counseling for his reckless attitude and the college staff are working in fearful atmosphere for his rude behavior as he can go to any extent and it becomes unbearable to them from his behavior. The defacto-complainant in the course of her examination during the investigation reiterated

the facts which she disclosed in her report and further added that he abused her in filthy language and threatened in dire consequences to see her outside the campus and argued in such a way that they are cheating students for the sake of bread and butter. The statement of (L.W.2) Deepak Shyamrao Khobgade, who is the principal of the college, is that the college is situated at Mangalpally of Ibrahimpatnam mandal functioning since 2012 and the accused Kothapally Mallesh, a student of Pharm-D, 6th year in college on 18.07.2014 came to the college for depositing fee and after payment of fees came back upto college main gate where he was stopped by security personnel on that he picked up a quarrel with them argued with the A.O. threatened with dire consequences and on 19.07.2014 they invited the parents of the students, discussed the pending issues and on 20.07.2014 said Mallesh again came to the principal office and questioned for calling parents of the students to college and even he replied that he never called said Mallesh and his parents, then he questioned for calling the parents of the other students of the college and abused saying for sake of salary and bread and butter they were doing so and thereby playing fraud and torturing the students and parents and as if he is not fit to be a principal of the college. He also stated that in the year 2013 also there was a complaint against said Mallesh by Srikala, a faculty alleging that his behavior was not proper in the classroom and creating nuisance and spoiling the academic atmosphere in the classroom. However, taking into consideration of his future, the matter was settled and even later he used to behave rudely with faculty and other staff of the college in a defamaing way though the college is bearing all the troubles created by him for the sake of the institution, however, it is out of the control of his behavior, hence to take action. The L.W.3 Mukesh Kumar, one of the eye witnesses to the incident also reiterated the same as to he abused the A.O. by threatening her with dire consequences and misbehaved with the security personnel and the statement of L.W.4. B.Ashok security guard, given his statement to the investigating officer that as a part of his duty to search the persons coming and going during college hours from 9.30 A.M. to 4.00 P.M, and that as per the rules if anybody wants to go out from the college they must obtain permission of the principal and show the chit to that effect to the security guard, however at 3.30 P.M. on 18.07.2014 the accused without such permission when came to the gate to go out, when he asked for a pass or chit for which he expressed his anger and

questioned the propriety as to who is he(the security guard) to prevent his going out and abused him saying that is why their lives are burning like that, and then went back towards the A.O. and reported her about security guard for not allowing to go out without permission or slip.

3. No doubt either in the report to the police by the defacto-complainant or in her statement, she did not refer what is the filthy language he used or what are the abuses he hurled to appreciate as to intent to insult the modesty of her to attract the offence under Section 509 of IPC. The statements of other witnesses and the contents of the charge sheet with reference to witnesses statements referred supra also no way indicate the offence under Section 509 of IPC. In this background, it is the contention of the petitioner in person in the quash proceedings that the allegations are falsely engineered, that he completed his D-Pharmacy course with Grade-A (72%) in that Institute in academic year 2013-14 and on 25.09.2013 the college issued a office demand notice against him to pay Rs.92,500/- by 25.10.2013 for continuing his 6th year (internship) Pharm-D, on that on his request to the A.O. to follow the proceedings given by APSCHC under R.C.No.165/APSCHC/Pharm-D/Clinical internship/Residency, dated 28.01.2014, which he obtained under Right To Information Act from the State Council of Higher Education in relation to internship. It discloses as *"It is evident that, the students of first batch of Pharm-D Course need not pay fees in any form towards the 6th year (internship) programme of the course to the management of the college, except paying tuition fees for the first five years of the course as prescribed by AFRC"* and *"That collection of tuition fees for 6th year of the course(internship period) is not permissible"* however, the college officials instead of following the same, demanded to pay Rs.92,500/-, by the end of May, 2014 saying otherwise they would not permit him to continue his academics, that made him to approach the Hon'ble High Court by filing W.P.No.14616/2014 against the college and there was an order he obtained in the writ petition, dated 08.07.2014 after hearing the learned counsel for the college and as per the order, each student to pay Rs.480/- for processing practical records of the students, he paid on 08.07.2014 and after 10 days the college Chairman Venugopal Reddy told him to withdraw the case for that he will be exempted from 6th year fees and also he would be paid one lakh for which the petitioner did not heed as college

collected fees from more than 25 students which has to be returned as per the High Court directions and therefrom the college chairman and the A.O. intentionally filed a false case just 5 days before end of the academics of him and the police without going through booked a case falsely against him and thereby the proceedings are liable to be quashed. It is also his contention that for the alleged incident occurred was on 18.07.2014 whereas the complaint given was on 22.07.2014 with three days delay without explanation and in fact, on 18.07.2014 he did not go to the college as he paid fees of Rs.4,80/- on 08.07.2014 even as per the writ petition order on even date and he was given the conduct certificate even on 09.07.2014 which shows his conduct is recorded good and in the said Writ Petition final orders were also passed on 01.07.2015 in his favour, that he is unable to get passport and visa for his further academics due to the criminal case pending though he is planning to go abroad and thereby so called complaint is nothing but a false accusation and out of spite or ill-will and is liable to be quashed.

4. The material filed with the quash petition shows the college issued office demand notice dated 25.09.2013 for the 6th year –Pharm-D 2008-09 required to pay tuition fees for the academic year 2013-14 by 10th October, 2013 of Rs.92,500/- including previous year due of Rs.4,000/- that substantiates the petitioners averments apart from the APSCHE proceedings dated 28.01.2014 to the Special Secretary to Government, Higher Education(EC) Department indicates that the duration of the Pharm-D is 6 years including one year internship/residency training introduced in the year 2008 and the first batch students are undertaking internship training during 2013-14 and management of the Pharmacy colleges admitted the students of the said students are entitled to stipend during the period of internship, the managements of the colleges of Pharmacy have to enter MOU with hospitals concerned which are offering internship training and to pay Rs.25,000/- per annum per student towards providing training in the hospitals which the management of the colleges must have paid and as per the Gazette of India Pharma-D course of 6 years of which 5 years is of study of and one year is of internship but scholarship cannot be paid for internship/housemanship in the MBBS course or practical training or other courses however, AFRC fixed uniform tuition fee for first batch of students which they are not entitled to reimbursement. Further in the in the light

of above, the students of first batch of Pharm-D need not pay fees in any form towards 6th year internship programme to the management of the college except tuition fees as prescribed by AFRC, thereby the students representation is genuine. The order in the Writ Petition No.14616 of 2014 dated 08.07.2014 filed by the petitioner against the APSCHE and the BIT represented by principal and correspondent and the Secretary to Government, Higher Education, as he is a party in person reads,

“Each student, according to the learned counsel for the second respondent and Smt. P.Anjani, is required to pay a sum of Rs.480/- for processing the practical records of the students. Unless this fee is paid, processing the practical record may not be feasible. Therefore, all the students of the second respondent-college who are desirous of submitting their practical records, would approach Smt. P.Anjani, A.O., either today or tomorrow or the day after and offer to pay Rs.480/- and as soon as such payment is effected, an appropriate receipt will be passed on by her and necessary information will also be passed on by her to the Head of the department to receive the records thereafter. Accordingly, the practical records of the each student will be assessed for the intrinsic merit contained therein. All the students shall also be permitted to appear for the viva voice examination.” It is with this order passed notice before admission and the final disposal order is that the learned Government pleader for Higher Education placed on record a letter 4665/TE/A2/2014-1, dated 27.06.2015 wherein State Government issued clarification in the issue and para-5 of it speaks that decision is taken by the Government of Pharmacy colleges to give scholarship of Rs.5,000/- per month to each student during internship 6th year Pharm-D course to the batch of students admitted during the year 2008-09 in the course and who have undergone internship programme of the 6th year as prescribed in the curriculum in the academic year 2013-14, out of the tuition fees of Rs.86,000/- collected by them. Further held that in the instant case, the petitioner did not pay any amount towards tuition fees of Rs.86,000/-. In view of the above order, after deducting Rs.60,000/-(Rs.5,000/- p.m. x 12) out of the tuition fees payable is of Rs.86,000/-, the petitioner is to pay remaining amount of Rs.26,000/- only towards 6th year tuition fees and on its payment only he entitles for the return of certificates from the college.

5. The final order was dated 01.07.2015. The incident happened as per the FIR was dated 18.07.2014 and the report was dated 22.07.2014 and the fee of Rs.480/- is paid was dated 08.07.2014 itself and his bonafide and conduct certificate issued by the college dated 09.07.2014 shows his conduct during the academic year 2014-15 is good who is a student of 6th year Parma-D course. The another certificate issued in his name again on 20.08.2014 also shows the conduct as good. It is therefrom there is substance in the contention of the petitioner that the college bore grudge against him for his filing the Writ Petition and inclined to the terms of negotiation to withdraw the writ petition. No doubt he could not fully succeed in the Writ Petition but for saying even Rs.26,000/- payable after deduction of Rs.60,000/- (Rs.5,000/- p.m. x 12) out of the tuition fees payable is of Rs.86,000/-, by the final order dated 01.07.2015. In this background, coming to the ingredients of the other offences Section 506 and 290 of I.P.C. neither from the statement of the Security guard nor from the statement of the A.O. or from the statement of L.W.3 Mahesh-a witness to the incident before L.W.1 A.O., there is nothing to show any criminal intimidation by the petitioner that resulted fear in the mind of them or any threat to cause injury to the person or reputation or grievous injury to the property as defined under Section 503 of IPC the threat should be with intent to cause harm to that person and consequentially do an act or omit to do an act as a means of avoiding execution of threat to constitute criminal intimidation as committed. These ingredients are lacking in the case on hand including before the Security Officer and the A.O. during the so called earlier incident of his rude behavior in the academic class not the subject matter of the complaint herein but for at best to judge his conduct with reference to it as part of investigation. There remain only the offence under Section 290 of IPC which public nuisance. Here either from the statement of L.W.1 or L.W.3 that in the office of the A.O., the scene created by the petitioner does not amount to public nuisance much less before the Security Guard that too, from the very say of the Security Guard which reveals that when he obstructed the petitioner in going out without pass, the accused went back to the A.O. office and then went outside.

6. Having regard to the above and also following the guidelines of **Bhajanlal Vs. State of Haryana**, the Court feels to subserve the ends of justice to quash the proceedings in C.C.No.555 of 2014 on the file of the IV Metropolitan Magistrate,

Cyberabad at Ibrahimpatnam so also pursuing further academics by petitioner by obtaining Visa or Passport for which the case shall not hang on.

7. Accordingly, the Criminal Petition is allowed. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:11.09.2015

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