

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.9625 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in C.C.No.222 of 2014 on the file of IV Additional Chief Metropolitan Magistrate, at Hyderabad.

2 a) C.C.No.222 of 2014 is a private complaint filed under Sec.500 of IPC. The allegations are that the complainant is the Secretary of Anwar-ul-uloom Educational Association. The said society purchased 13,286.10 sq.yards of site in Malleshwari, Hyderabad, which is its absolute property. However, a Gazette Notification appears to have been published incorrectly contending that the property is a Wakf property. The complainant as the Secretary of the Society has been engaged in several legal battles with the Wakf board as against its claim.

b) While-so, the accused is recently appointed as Special Officer of Wakf Board. On 10.04.2014, the accused in his personal capacity and unconnected to the activities of the Wakf Board has convened a press conference solely for the purpose of wrecking personal vengeance against the complainant and for defaming the complainant, the accused resorted to the personal action which is not attributable or relatable to the acts of the Wakf Board. In the said press conference the accused made certain remarks causing defamation to the name and fame of the complainant which is not part of his statutory duties. His deliberate acts were aimed at injuring and harming the reputation of the complainant. The wide reportage given to the press conference and prominent publications made in various newspapers such as Times of India, Siasat, Etemaad etc., has resulted in serious loss of reputation to the complainant. The complainant by extracting remarks said to be made by the accused, alleged that those remarks amount to defamation.

Hence the complaint.

3) Opposing the allegations, learned counsel for petitioner submitted that the petitioner/accused was recently appointed as Special Officer of Wakf Board and he is a Senior IPS Officer in the rank of DIG and he has not committed any acts detrimental to the interest or reputation of the complainant and he only took steps to protect the Wakf properties as per Wakf Act, 1995 and discharging duties as such officer will not amount to defamatory against anybody. In case if any facts are published in Media, it cannot be said to be defamatory against anybody. Learned counsel further argued that even if the remarks said to be made by the accused are uncontroverted to be true, since they were made in his official capacity as a public servant, no criminal proceedings can be maintainable against him without the necessary sanction from the Government under Sec.197 Cr.P.C. Learned counsel thus argued that continuation of the proceedings will amount to abuse of process of law and thus prayed to quash the proceedings. He relied upon the following decisions:

1. ***N. Chandrababu Naidu vs. G.Janardhan Reddy and another***
2. ***Director of Inspection and Audit and others vs. C.L.Subramaniam.***

4) Per contra, opposing the petition learned counsel for 1st respondent/ complainant argued that the press conference was conducted by the accused in his personal capacity which has nothing to do with his official functions and therefore, no previous sanction of the Government is required to prosecute him. It is further argued that whether the statements made by the accused will amount to defamation or not can be determined only after a full-fledged trial and hence the petitioner does not deserve quashment of the proceedings. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** Some of the statements said to have been made by the accused and the explanation of the complainant on those statements are worth mentioning to consider the claim of the complainant that by such false statements given by the accused in the press conference, his reputation was damaged.

Comment No.1:

“Today, Anwar ul Uloom College was taken into direct management by Wakf Board because despite giving show cause notice and supplying the document, that Mahboob Alam Khan had requested who is the Secretary – we gave all documents – despite that, they were continuously asking for documents including under the RTI – Despite supply of documents there was no reaction. The time for two weeks granted by Court also elapsed. Because of no reaction or a substantive explanation on their behalf, we, the Wakf Board took this institution–Anwar ul Uloom in direct management.”

The reaction of the complainant is that:

“The management of Anwar Ul Uloom Educational Association has not been taken over by the Wakf Board till date. In fact, in W.P.No.11123 of 2014, the Counsel for the Wakf Board, on 11.04.2014 i.e, one day after the press conference, categorically stated before the High Court that ‘petitioners/complainants would be given adequate opportunity and after hearing them, an appropriate order would be passed by the Board in accordance with the law. Thus, the aforesaid statement is ex facie incorrect and issued with mala fide intentions.

The Wakf Board has given only partial information to the Complainant despite repeated requests. Indeed, no information has been furnished to the Complainant pursuant to their application under the Right to Information Act.

Comment No.2:

“Despite the fact that the property is wakf notified – In 1984, the Gazette had also come – 32A dated 30.08.1984. This information had been given to them in 2001 itself – Despite that, they have been contesting that the property is a private property and they have no relation to wakf”.

If the Gazette is not challenged in accordance with Section 6 or if no suit is filed, the Gazette notification becomes final.”

The reaction of the complainant is that:

The aforesaid statements are also incorrect and baseless. It is pertinent to note that, vide his letter dated 23.10.2001, the Complainant had informed the Wakf Board that the property was never converted into Wakf. In fact, realizing the mistake, the Survey Commissioner had, vide letter dated 23.06.2006 had informed the Complainant that a fresh survey would be conducted. However, the Accused, for mala fide reasons deliberately withheld the said information from the press. The accused further failed to refer to the settled legal position that the gazette notification is not binding on a 3rd party and is therefore, not binding on the Society.

Comment No.3:

“Anwar-ul-Uloom management has been consistently claiming it to be private property – this was their stand”.

“As per Section 101, any Mutawalli – we have continuously been maintaining that as we are public servants, servants of public, we are servants / care takers and their attitude should be thus that each paisa should be accounted for as we are accountable as public servants..... that should also be the obligations of the Mutawallis. They cannot treat the wakf property as their personal property.”

The reaction of the complainant is that:

“The above statement is also incorrect since it has been consistent stand of the management that the property belongs to the Society and as the office bearers of the Society, the management is under an obligation to protect the said property. Thus, the statement of the Accused that the management had been claiming the property to be personal property is ex facie false and baseless.

Comment No.4:

“it is surprising that the society which is running it, the elders of this very society, in 1955 had dedicated the property as wakf”.

The reaction of the complainant is that:

“It is submitted that the said statement is also false. The property was never dedicated as Wakf. In fact, it is the first time that it has been claimed that the property was dedicated as a wakf by the elders of the complainant’s family in 1954. Pertinently, there are no documents evidencing the same.”

7) The above allegations if uncontroverted, they would reveal that

accused is claiming as if the disputed property is a Wakf property and Wakf Board took the institution for its management which is severely opposed by the complainant and according to him, the statements amount to defame his Educational Institutions. As can be seen from the petition averments and arguments advanced on behalf of accused, the statements even if taken to be true, do not constitute an offence of defamation and further, no prosecution can be taken up against accused without the previous sanction of the Government.

8) In the considered view of this Court, *prima facie* the statements are defamatory in nature. However, the veracity of those statements and their justification have to be decided only after a full-fledged trial. Similarly whether the accused made such press statement in his official capacity or individual capacity also has to be decided during trial. As the matter stands, since there is a *prima-facie* material, it is not apposite for this Court to quash the proceedings. Therefore, the petitioner/accused is directed to face the trial and put-forth all the defences that are legally permissible to him for consideration of the trial court. The cited decisions will not help the case of the petitioner.

9) In the result, this Criminal Petition is dismissed with the above observations.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 01.06.2015

Note: L.R Copy to be marked: Yes / No

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