

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.754 and 1656 of 2015

COMMON ORDER:

In Criminal Petition Nos.1656 and 754 of 2015, the accused Nos. 1 and 2 respectively seek to quash the proceedings in FIR No. 208 of 2014 of Cherial Police Station, Warangal District.

2) On the report of second respondent/complainant by name Smt.Habibunnisa, the Police of Cherial Police Station registered a case in Cr.No.208 of 2014 against the petitioners/Accused Nos.1 and 2 for the offences under Sections 509, 354A, 447, 324 r/w 149 IPC and investigation is in progress.

3) The allegations are that the complainant and her sister—Hameedunissa, who is a citizen of U.S.A and cancer survivor, visited the property of complainant at about 2:30pm on 24.12.2014. When they reached the land found Accused Nos.1 and 2 and their henchmen trespassed into their land digging the property and when the complainant objected their criminal acts, they abused both the sisters in filthy language and beat them and also tried to outrage their modesty.

The investigation is reported to be pending.

4) Denying the allegations, it is argued on behalf of petitioners/A.1 and A.2 that A.1 is the absolute owner and possessor of Ac.18-03 gts forming part of Sy.Nos.238, 239, 296 and 297 of Inapur village, Cherial Mandal, Warangal District purchased under a registered sale deed dated 29.04.2005 from one of the co-sharers of the husband of the complainant. On 05.05.2004, the vendor of A.1 and husband of complainant entered into a Memorandum of Family Arrangement pursuant to which the lands in the aforesaid survey numbers of Inapur village were divided between the vendors of A.1 and husband of the complainant. A.1 purchased the lands in the above survey numbers which fell to the share of the co-sharers. While-so the

husband of complainant approached revenue authorities for sub-division of the land and the sub-division was made by the Tahsildar through a private licensed Surveyor without notice to the A.1 or other persons effected. Thereupon the Assistant Director of District Survey and Land records in his letter RC No.A2/301/2012 dated 10.07.12 addressed to Regional Deputy Director, Survey and Land Records, Hyderabad stating that the earlier survey was conducted without issuing notice to the concerned parties and hence it was not valid one and the sub-division work has to be conducted by following rules. Aggrieved by the orders of the Regional Deputy Director, the husband of complainant filed W.P.No.28045 of 2012 and Hon'ble High Court in its order dated 20.08.2013 directed the sub-division of the land to be done as per the procedure laid down in Circular RC No.N1/1408/2007 dated 13.07.2007 issued by the Commissioner of Survey and Land Records. Thereafter the Tahsildar, Cherial Mandal gave a notice on 11.11.2013 for sub-division of the land as per the above order of Hon'ble High Court. The petitioner/A.1 gave a representation on 18.11.2013 stating that he purchased Ac.18-03gts in various survey numbers and requested Tahsildar to conduct survey in accordance with Memorandum of Family Arrangement which was signed by the husband of complainant and co-sharers. However, on 20.11.2013, survey was undertaken without reference to the Memorandum of Family Arrangement. The Tahsildar issued a memo dated 09.12.2013 to A.1 stating that he had no connection with the land in Sy.Nos.238/A, 239/A, 295/C, 296/A and 297/A of Inapur village. Questioning the said memo, A.1 filed W.P.No.38394 of 2013 and the High Court was pleased to allow the Writ Petition and directed Tahsildar to conduct survey in accordance with the directions already issued in W.P.No.28045 of 2012. When the same was pending, the husband of complainant filed O.S.No.94 of 2014 before Additional Junior Civil Judge, Jangaon for perpetual injunction against A.1 and others and no interim injunction was granted in that suit and later he had withdrawn the said suit. In the meanwhile, the survey was again conducted without reference to the orders passed by the Hon'ble High Court and therefore, the petitioner/A.1 is going to

take steps according to law. Be that it may, the complainant lodged the report at the behest of her husband with a view to pressurize and threaten the petitioners/ accused. The complaint allegations are false to the core and the petitioner/A.1 being the owner of Ac.18-03gts in Sy.Nos.238, 239, 295, 296 and 297, the question of petitioners/accused trespassing into the land does not arise. Finally, it is contended that the matter between the parties is purely civil dispute and hence the proceedings are liable to be quashed since continuation of the criminal proceedings amount to abuse of process of law.

5) Heard both sides.

6 a) Firstly, the argument on behalf of petitioners/A.1 and A.2 is that FIR is silent as to which particular land the complainant and her sister went to see on the date of alleged incident as the particulars of survey number, patta number, extent of the disputed land are not mentioned in the FIR. In view of civil disputes pending between the parties with regard to the land covered by certain survey numbers which the accused claim ownership, non-mentioning of the survey number and patta number of the land will not give clarity to their claim.

b) Secondly, it is contended that injuries allegedly suffered by the complainant and her sister were manipulated which is manifest from the fact that when the alleged incident was occurred on 24.12.2014, the complainant's sister was referred to the Government Hospital on 05.01.2015 and medical certificate was issued as if she suffered simple injuries long after the incident. The petitioners argued that continuation of proceedings will amount to abuse of process of law in view of pending civil disputes and unbelievable medical record. In this regard, they relied upon the decision reported in ***Chandran Ratnaswami vs. K.C.Palaniswamy and others***.

c) Finally, it is argued that even if the FIR allegations are uncontroverted, the offence under Sec.354A IPC will not attract since neither there was any intention nor knowledge on the part of the accused that the modesty of a woman would be outraged by their

acts. It is argued that even though no specific acts constituting outrage of modesty were imputed in the FIR, so many improvements were made in the 164 Cr.P.C statements of the complainant and her sister as if the petitioners accused tried to outrage their modesty. Hence those statements may not be accepted. They relied upon the decision reported in ***Ajaha Ali vs. State of West Bengal*** on the aspect as to what amounts to outrage of modesty of a woman.

7) Per contra, by filing the copies of the wounds certificate and 164 Cr.P.C statements of the complainant and her sister, learned Assistant Public Prosecutor and also learned counsel for complainant vehemently argued that the complaint is not an offshoot of civil disputes pending between the parties and the heinous and atrocious acts perpetrated by the accused against two helpless and aged ladies is evident from the wound certificates and 164 Cr.P.C statements of the victims and hence the investigation which is in the midway may be allowed to continue to exhume the truth of the FIR allegations. Thus they prayed to dismiss the petition.

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

“Whether there are merits in these petitions to allow?”

9) **POINT:** The crux of the matter is whether complainant gave false report due to pending civil disputes between the parties or whether there exists a *prima facie* material for ordering continuation of investigation. The contention of the petitioners is that non-mentioning of the particulars of the land to which the complainant and her sister allegedly went on the date of incident itself projects that they are willfully hiding facts relating to the pending civil disputes between the parties with regard to the sub-division of the land covered by survey numbers. It is true that in FIR we do not find the specification of the land which the complainant and her sister visited on the date of incident. However, it must be noted that a FIR is not an encyclopedia relating to all the facts touching the offence. So mere omission to mention the particulars of the disputed land is not a ground to discard the complainant's case. We will find in the 164 Cr.P.C statement of

the complainant—Smt. Habibunnisa Begum that they are owners of Ac.27-00gts of agricultural land in Sy.Nos.297, 240, 338, 339, 295 and 296 situated beside Yellamma Temple, Inapur village and they used to raise paddy, sunflower crops etc, in the said land and her farm servant—Sudershan told that there was no sufficient water in the existing bore-well and asked her to dig another bore-well and so on 24.12.2014 at about 2:30pm when she along with her sister—Hameedunnisa Begum went to her agricultural land, they found accused along with their henchmen trying to erect the huts in their land and when they questioned their high-handed act, the accused and their men abused her and her sister in most filthy language and A.2 caught hold her and A.1 and A.2 beat her with hands, due to which she sustained injury to her right ear and lost the hearing power also and further A.1 threatened her that he would bury her in that land. Her sister—Hameedunnisa Begum gave 164 Cr.P.C statement in similar fashion. She too deposed about the specific overtacts of the accused. She stated that on seeing that the accused abusing and beating her sister, she intervened and tried to pacify them but they did not heed her words and A.2 caught hold her collar and beat her on her right hand and on her chest and A.1 abused her in most filthy language and one Abdullah, who is the servant of A.1 threatened her with dire consequences on the point of crowbar on the instigation of A.1. Further, A.1 threatened her sister that he would bury her in the agricultural lands. This is the version of the complainant and her sister in their respective 164 Cr.P.C statements. It is true that statements of the two ladies were recorded on 21.02.2015 i.e. sometime after the alleged incident. However on that ground alone their statements cannot be discarded. Not only these two victims, some independent witnesses like L.Ram Reddy, M.Yadagiri Goud, V.Mallesham, K. Ramchandu, B. Narasimha Reddy etc., in their 161 Cr.P.C statements have stated about the incident. Further, the copy of wound certificate of Smt. Hameedunnisa issued by the Government Hospital, Cherial would show that she suffered blunt injury of 4 x 2cm on her lumber spine. Ofcourse this medical certificate was purported to be issued on 05.01.2015 i.e, about 20

days after the incident. In my considered view, the veracity of the statements of the witnesses and truth or falsity of the victims suffering injuries etc., can be determined only after investigation. As the matter stands it can be said that there exists a *prima facie* material touching the incident and the alleged atrocious acts of the accused. Therefore, the contention of accused that a false report was lodged in view of the pending civil disputes relating to the sub-division of the land covered by some survey numbers cannot be accepted. The further argument of the accused that even if the FIR allegations are uncontroverted, no offence under Sec.354A IPC could be made out since there was neither intention nor knowledge to outrage the modesty of the victim lady also cannot be appreciated at this stage. Suffice to say that there is a material in the form of 164 Cr.P.C statement that the victim was beat on her chest. So whether the acts of accused amount to outraging the modesty of the victim lady or not can be finalized only after the investigation is completed. Hence the cited decisions will not help the petitioners/accused to quash the proceedings.

10) So on a conspectus of entire matter, this Court is of the considered view that investigation shall be continued to its logical end to unearth the truth of the allegations leveled in the FIR.

11) In the result, both the Criminal Petitions are dismissed with a direction to the Police of Cherial Police Station to complete the investigation expeditiously.

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

U. DURGA PRASAD RAO, J

Date: 03.06.2015

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

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