

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

Criminal Petition No.7401 of 2013

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ORDER:

This Petition is moved by petitioners, who are arrayed as accused 1 and 2 in C.C.No.360 of 2013 pending on the file of the Additional Judicial Magistrate of First Class at Peddapuram, East Godavari District. They sought for quashing the said charge sheet.

It is rather an unfortunate case. The 2nd respondent herein is the defacto complainant. His wife is the sister of the two petitioners herein. She seems to have filed a civil suit seeking partition of certain immovable properties and to the said suit the petitioners herein are made parties. Ever since the said civil suit is instituted, the relationship of the parties has been strained.

The defacto complainant has lodged a complaint, which discloses that he has called up the 1st accused on 25-11-2011 and requested him to return the Bajaj Pulsar Motorcycle and a gold chain, which were taken from the defacto complainant for the purpose of attending an important function and since the same are not being returned even after lapse of a considerable period of time, the defacto complainant appears to have set a deadline of 24 hours for their return failing which, the defacto complainant has informed accused No.1 over telephone that, he will have to approach the Police by lodging a complaint. Enraged by this communication, it is now alleged by the defacto complainant that, both A-1 and A-2 trespassed into his house at Peddapuram at about 6-30 pm on 26-11-2011 and roughed him up and pushed him on to the ground and dragged him out of his house. There was also some kind of altercation that has taken place, which ultimately resulted in breakage of some flowerpots, etcetera. This alleged act of A-1 and A-2 triggered a complaint being filed against them before the Court and, after investigation, the Police have now filed a charge sheet, which is numbered as C.C.No.360 of 2012 (but not C.C.No.360 of 2013 as mentioned in the petition).

The learned counsel for the petitioners Sri P. Radha Krishna would submit

that the contents of the complaint lodged by the 2nd respondent are patently false and they are based upon fabricated documentary evidence and also the complainant has purposefully suppressed the most vital and important information in the complaint. It is the case of the petitioners herein that they are the true owners of the Bajaj Pulsar Motorcycle bearing registration No. AP 05 4475 and it is the defacto complainant, who borrowed it from them for his personal use for a while and, the defacto complainant being their brother-in-law, they have allowed him unsuspectingly to take away the motorcycle and use it for a while. But however, when he has been declining to return the same to the petitioners, they had sought for the help of the local police for restoration and possession of the said motorcycle and the Police at Gollaprolu, East Godavari District, summoned the defacto complainant on 15-02-2008, made preliminary enquiries into the matter and then made the defacto complainant hand over the said motorcycle to the

1st accused petitioner herein on 15-02-2008. This information has been withheld by the defacto complainant. Therefore, the defacto complainant has wrongly laid a serious allegation against the petitioners that they have taken away the motorcycle belonging to him. This apart, Sri Radha Krishna would also point out that the petitioners herein have sold away the said two-wheeler on 19-04-2010 to a third-party as they needed some money. A transfer application for transferring the ownership right over the said two-wheeler has been signed and was duly delivered to the third-party purchaser of the motorcycle and its ownership also stood transferred in the record of the Transport Department in favour of such a third-party purchaser and all these events have taken place in April, 2010 and hence, the complaint lodged by the petitioner more than 1 ½ years later in November, 2011 with regard to failure of the petitioners accused herein to return the said motorcycle, is a palpable false allegation thrown against the petitioners by the defacto complainant 2nd respondent. It is further asserted by Sri Radha Krishna that the question of the petitioners taking a gold chain from the 2nd respondent for the purpose of attending to a family function is an allegation, which has been spun-off against them out of spite and vengeance rather than arising out of any genuine factor. Sri Radha Krishna would submit that the 2nd respondent defacto complainant is a practicing advocate at Peddapuram and being a sensible man, he would not have lent a gold chain belonging to him to the petitioners accused herein and would not have also waited for a longer period for the same to be returned by the petitioner, if it were to

be true that such a gold chain has been lent to them. This apart, if the gold chain has already been disposed of, as alleged, the 2nd respondent defacto complainant is under obligation to set forth the relevant facts in this regard instead of making allegations without there being any details.

It is contended by Sri Radha Krishna that since the complaint lodged by the 2nd respondent is a motivated one stemmed out of personal spite and malice of the 2nd respondent against the petitioners herein and in view of the suppression of most vital fact relating to the intervention of the Police on 15-02-2008 for restoring the motorcycle in question from the hands of the 2nd respondent to the petitioners herein and also for producing false and fabricated documents containing a forged signature of the 1st petitioner herein as if in a couple of days time from 15-02-2008, the 1st petitioner had once again sold the very same motorcycle to the 2nd respondent, the complaint in question deserves to be quashed.

Per contra, Sri K.V.Seshagiri Rao, learned counsel for the 2nd respondent would submit that the charge laid against the petitioners herein is relating to their unauthorized trespass and unleashing violation causing injuries on the 2nd respondent defacto complainant. Therefore, the motive behind the allegation traded by and between the parties is not relevant. But, relevant is the violence unleashed by the two accused on 26-11-2011 at about 6-30 pm as witnessed by three persons of the locality, who intervened in the matter and separated the defacto complainant from the clutches of the accused persons and rescued him. Therefore, the question of examining the past disputes or bearing them in mind for quashing the charge sheet is irrelevant.

I have given my anxious consideration to the rival submissions. It is a pity that the petitioners herein and the 2nd respondent, in spite of being closely related to each other, are not in a position to sort out the differences and disputes amicably amongst them. It is also further pity that the 2nd petitioner herein and the 2nd respondent are both practicing advocates. Instead of amicably settling the problem amongst themselves, they are trading allegations against each other forcing one Court or the other to examine their conduct. The efforts put in by me for securing a suitable settlement amongst the warring brothers-in-law have also been met with more than necessary and required resistance. Consequently, I had to stop pursuing

that lead and deal with the case.

The attributions amongst the parties as to what really is the causative factor for the disputes is not so much relevant. What the petitioners herein are now accused of is that they have trespassed into the house of the defacto complainant on 26-11-2011 at 6-30 pm and unleashed some violence against him causing some abrasive injuries on him. The scuffle appears to have also resulted in breakages of some flowerpots. As of now, three witnesses have been elicited, who not only have seen the violations, but appear to have intervened and rescued the defacto complainant from the clutches of the petitioners herein. As to how far those witnesses are to be believed, as the learned counsel Sri Radka Krishna would describe them as convenient witnesses set up by the 2nd respondent as those witnesses are none other than his own clients, is matter for appreciation of the criminal court and at this stage, it will be hazardous for this Court to speculate about the same. As to whether the motorcycle in question has already been transferred, as urged before me, nearly 1 ½ years prior to the alleged date of incident, is also a factor, which the criminal court will be able to take into account for the purpose of discrediting the conduct of the

2nd respondent. But, as urged by Sri Seshagiri, the current scope of scrutiny is confined to the allegations of trespass and the alleged violations unleashed against the 2nd respondent on 26-11-2011. Perhaps, the exchange of unpleasant events between the parties earlier thereto, could be taken into account suitably by the Court, which tries the offence.

I, therefore, do not see any justifiable reason for quashing C.C.No.360 of 2013 pending on the file of the Additional Judicial Magistrate of First Class at Peddapuram, East Godavari District.

Accordingly, the criminal petition is dismissed.

Consequently, the miscellaneous petitions, if any, stand dismissed.

I hope that before the trial gets completed, both sides will give a serious thought to my suggestion that they should patch-up their differences and sort out them. However, the trial Court would seek to expedite the trial of the matter.

NOOTY RAMAMOHANA RAO, J.

mrk

17.06.2015.