

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5295 of 2015

ORDER:

The petitioner who is accused in Crime No.113 of 2015 of Bhiknoor Police Station of Nizamabad District, filed the criminal petition to quash the said F.I.R. proceedings dated 28.05.2015, which is out come of a private complaint that was filed by the second respondent/*defacto* complainant dated 21.05.2015 on the file of the Judicial First Class Magistrate, Kamareddy and the learned Magistrate referred the same under Section 156 (3) of the Criminal Procedure Code (Cr.P.C.) to the said police to register the crime and investigate. It is their from the police registered the crime which is pending under investigation.

The second respondent/*defacto* complainant even served with notices ordered by the Court, failed to attend and the first respondent is the State, represented by the Public Prosecutor in the quash petition.

Heard and perused the material on record.

The averments of the complaint in brief are that in the year 2009, the accused (quash petitioner) offered to sell his house bearing No.7-4 of Rajampet (V) to the complainant for Rs.1,30,000/- and the complainant has paid the entire sale consideration, started demanding the accused pursuant to the sale agreement to register sale deed for which the accused has been postponing on one reason or the other and later through elders, a panchayat was convened by the complainant at Rajampet (V) and their elders even advised to register the sale deed, the accused refused to do so and finally on 06.04.2015, the complainant lodged a complaint to the S.P., Nizamabad in the 'prajavani' which is with no result and later on 15.05.2015, the complainant visited the house of the accused at Rajampet and made a request to register the sale deed, but the accused started abusing her in filthy language and also beat her with hands and legs by dragging her onto the ground and kicked on her stomach and back and injured her. When she raised hue and cry, the persons four in number sought to be the alleged witnesses to the occurrence, came there and rescued the complainant, otherwise she could have met with death in the hands of the accused for the reason of going to the house of the

accused and asking to execute registered sale deed. Hence, to take action for the offences punishable under Sections 420, 406, 506(ii), 323 and 290 of IPC by referring the complaint to the police for investigation.

No doubt along with the complaint a short affidavit of even date filed by the complainant showing the averments mentioned in the complaint are true and correct and the documents are genuine and not concealed any of the facts in the complaint. It is infact as required by the Apex Court's expression ***in Priyanka Srivastava and others Vs. State of Uttar Pradesh***. Infact the other compliance requirements therein are that before filing a private complaint, police report has to be given and it is to be sent by Registered Post, if the report is not received by Station House Officer. The compliance that to be shown is not there in this case. As no copy of any police complaint/report filed much less even to say any report lodged before S.P., Nizamabad of 'prajavani' on 06.04.2015. The sale agreement is stated of the year 2009. The report for the so called non registration of the sale agreement is on 21.05.2015. There is nothing even to say any notice issued for specific performance of the contract. There is nothing mentioned as to any time stipulated in the agreement. There is nothing as to having paid entire consideration allegedly on the date of agreement in 2009, what remains of non-obtaining sale deed and why not demanded for performance even by giving legal notice. There is nothing to believe, even after alleged elders dispute at Rajampet by complaint for specific performance of the agreement to register sale deed that was refused by accused which is prior to 06.04.2015, and on that day in prajavani lodged a complaint before S.P., Nizamabad with no use; what made again to go to make a request to the house of accused on the alleged date 15.05.2015. There is nothing even to show for the alleged beating and dragging any injury sustained and if so where and what is the medical record? Infact a perusal of the record shows, as per judgement in Priyanka's case (supra), there is judicial non-application of mind by the learned Magistrate to be forwarding under Section 156 (3) of Cr.P.C. of the private complaint filed for police investigation, but was referred for the sake of asking by the learned Magistrate which is unsustainable as laid down by the Apex Court. Apart from it, as per the quash petition, grounds of the accusation, it is one of the main contentions that, earlier the *defacto* complainant filed a police case in C.C.No.393 of 2011, for the same set of facts pursuant to the same sale agreement for the alleged non performance of the

contract and the case was ended in conviction and CrI.A.No.26 of 2014, dated 19.09.2014 was allowed setting aside the conviction and thereby the present criminal case proceedings are barred by Section 300 of Cr.P.C. No doubt in the present FIR, which is out come of private complaint referred to police, the offence for the alleged incident on 15.05.2015 was beating and causing injuries, causing public nuisance and criminal intimidation. For that, as referred supra in the alleged incident on 15.05.2015, there is no police report given to any injuries sustained. There is no any medical report filed or any treatment before any doctor and there is no explanation for the delay in filing a private complaint on 21.05.2014 for the occurrence on 15.05.2015 at about 12 noon as alleged. It clearly shows as contended by the learned counsel for the petitioner/accused, it is a false story weaved as if there is an incident on 15.05.2015 without even giving any police report in filing after six days, the private complaint proceedings and asking to refer to police without even mentioning the requirement of any police report even before filing complaint and the Magistrate did not apply his mind in forwarding for investigation, despite the expression in Priyanka's case of the guidelines to be followed by all Courts.

A perusal of the criminal appeal judgment enclosed to the quash petition shows the report before S.H.O. , Bikanoor (Ex.P1) dated 23.05.2011 by the *defacto* complainant against the accused herein referring that there is a contract of sale between them of the house No.7-14 of Rajampet about two years prior to 2009 for Rs.1,30,000/- and entire amount paid and obtained sale agreement and subsequently even on demanding refused to register the sale deed by accused by demanding additional amount of Rs.50,000/- thereby liable for the offences punishable under Sections 420 and 506 of IPC, saying that the accused was threatening the complainant for the demand to register the sale deed. It is to say that for the self same contract for the self same alleging act, he refused to register, having received the amount, the report presented and the police investigated and filed final report and the learned Magistrate, Kamareddy, taken cognizance in alleging C.C.No.393 of 2011 wherein after trial convicted with six months simple imprisonment and fine of Rs.5,000/- by judgment dated 19.03.2014 and the accused preferred CrI.A.No.26 of 2014, wherein the case was ended in acquittal by refusal vide judgment dated 19.09.2014 by the learned IX Additional Sessions Judge,

Kamareddy, where it was observed that there is no any offence of cheating made out, if made out.

It is clearly establishing that for the sale agreement, contract so called breach and alleged threats on demand to register sale deed way back on 23.05.2011, the *defacto* complainant against the accused presented police report, registered as crime and investigated and calendar case number given and the accused was put to trial and the alleged cheating held not made out from the respective trial and appeal judgment wherein the trial court judgment merged, the present complaint adding additional flavour in implicating by Section 406 that not even attracted from the alleged incident on 15.05.2015 and the other offences under Section 506(2) or 323 or 290 of IPC, besides not made out, the present proceedings are also barred by Section 300 Cr.P.C. apart from it, the proceedings are nothing but abuse of process and even the affidavit given by the complainant he has concealed by non disclosure of the earlier C.C.No.393 of 2011 and Crl.A.No.26 of 2014 proceedings, which is nothing but suppression of material facts, which is nothing but abuse of process. Thereby, the criminal proceedings are liable to be quashed in converting a civil dispute into criminal prosecution earlier and not satisfied with the earlier acquittal judgment and after the legal battle in again filing a private complaint without basis to further harass the petitioner/accused herein by the *defacto* complainant.

In the result, the petition is allowed and the proceedings in Crime No.113 of 2015 on the file of Station House Officer, Bhiknoor Police Station, Nizamabad District are quashed and bail bonds of accused if any cancelled.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:29.09.2015

vhb

