

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2497 of 2015

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ORDER :

The petitioner is accused No.7, no other than Sub-Inspector of Police, Pattabhipuram, L & O PS., Guntur District at the relevant time, among the 7 accused in C.C. No.54 of 2012 on the file of VI Additional Junior Civil Judge, Guntur, where the learned Magistrate has taken cognizance for the offences punishable under Sections 365, 342 & 347, 451, 427 r/w 34 IPC of the final report filed by CID police, Hyderabad from investigation of Crime Nos.10 and 11 of 2009, which is outcome of reports independently of 2nd respondent and her daughter—3rd respondent as de facto complainants.

2. Heard learned counsel for the petitioner/ accused No.7 and also 1st respondent —State represented by learned public prosecutor. As per the charge sheet, the address of respondents 2 and 3 is same i.e., Flat No.502, Yaganti Towers, Zero Line, Chandramoulinagar, Guntur, Guntur District and the notice sent to them is returned as left, thereby taken as sufficient service, since called absent with no representation, taken as heard and peruse the entire material.

3. The factual background is that there was a civil suit O.S. No.511 of 1992 on the file of Principal Senior Civil Judge, Guntur between the family members, in which the 2nd respondent is one of the parties. Undisputedly, the civil suit ended in compromise and consequently compromise decree was passed. It is later the 2nd respondent—de facto complainant of Crime No.10 of 2009 and on the self same facts, the 3rd respondent, who is her daughter lodged Crime No.11 of 2009 referred supra, by alleging that the suit O.S. No.511 of 1992 was compromised to which they were parties was outcome of fraud, thus filed petition to review said compromise decree and judgment and while the same was pending, it appears, the possession of the disputed premises pursuant to the compromise decree was taken by the compromise decree holders, who are among the accused Nos.1 to 6. It appears there from the de facto complainant of Crime No.10 of 2009 submitted a report to the

SHO, Pattabhipuram Guntur while accused No.7, who is the quash petitioner herein, was the Sub-Inspector of Police. The report was against several persons including the accused Nos.1 to 6 of the quash petition proceedings covered by C.C. No.54 of 2012. The Crime No.53 of 2008 was registered for the offence punishable under Section 143, 448, 427, 506, 380 r/w 149 IPC to say against all the Sections are even covered by Crime Nos.10 and 11 of 2009 of C.C. No.54 of 2012.

4. In the Crime No.53 of 2008 supra, referred to the allegations above, some of the accused therein filed CrI.P.No.1644 of 2008 to quash the FIR No.53 of 2008 and there was an interim direction directing the police to go ahead with the investigation but not to arrest the quash petitioners.

5. Be the things as it may, the respondents Nos.2 and 3—de facto complainants herein filed O.S No.187 of 2008 against most of the accused, which include the purchasers of the part of the schedule property covered by the compromise decree in O.S. No.511 of 1992. It is while the civil suit O.S. No.187 of 2008 is pending, impugning the compromise decree also of O.S. No.511 of 1992, there was a fresh compromise arrived between the 2nd respondent as well as of accused in the Crime No.53 of 2008 supra, wherein the vendees of the premises agreed to pay an amount of Rs.32,00,000/- to the respondents 2 and 3 and therefrom O.S. No.187 of 2008 was referred to Lok-adalath. The Lok-adalath recorded the compromise and passed an award on 31.03.2008 in Lok Adalat Case No.349 of 2008. Pursuant to the Lok-Adalat award, the CrI.P. No.1644 of 2008 (supra) was allowed on 15.07.2010 to quash the Crime No.53 of 2008.

6. It is to say, while Crime No.53 of 2008 and Crime Nos.10 and 11 of 2009 were pending, the civil dispute came to finality by settlement as per Lok-Adalat award No.349 2008 in O.S. No.187 of 2008, which is a consequential proceeding to compromise decree in O.S. No.511 of 1992 as discussed supra.

7. It appears from the record the allegation in so far as petitioner/ A7 in Crime No.10 and 11 of 2009 is colluded with other accused who are parties to O.S. No.511

of 1992 and purchasers of part of property from them, no other than parties to O.S. No.187 of 2008 that later ended in compromise as referred supra, while the investigation in Crime No.53 of 2008 was pending ended in quashing by order in Crl.P. No.1644 of 2008 dated 15.07.2010. Before quashing (supra), by the order of Additional DGP, CID dated 13.07.2009 the investigation was entrusted to the CID. Leave it as it is of the contention that without any government order of Additional DGP can entrust the investigation which tantamount to re-investigation by taking away the investigation from regular police to CID wing, Vijayawada, even taken the entire State within the meaning of the police station for the CID concerned to investigate anywhere in the State any Crime within the territorial jurisdiction, when subsequent to the Additional DGP, CID proceedings dated 13.07.2009 of Crime No.53 of 2008, said FIR was quashed on 15.07.2010 pursuant to the finality of the civil dispute by Lok Adalat compromise award No. 349 of 2008 in O.S. No.187 of 2008.

8. The CID, RCIU, Guntur having conducted investigation in Crime Nos.10 and 11 of 2009 filed the final report under Section 173 Cr.P.C that was taken cognizance by the learned Magistrate in allotting C.C. No.54 of 2012 itself to say even the civil dispute with the allegation of fraud or other offences were ended in amicable compromise and the report is outcome of civil dispute and not otherwise, it can not survive any longer to continue, after the lok-adalat award No.349 of 2008 dated 31.03.2008, even for the Crime Nos.10 and 11 of 2009 to survive that too when Crime No.53 of 2008 while under CID investigation ended in quashing by Criminal Petition No.1644 of 2008 dated 15.07.2010.

9. It is important to note that some of the accused filed Crl.P.No.2966 of 2012 to quash the proceedings in C.C No.54 of 2012 and this Court another bench by order dated 27.06.2014, categorically observed as follows:

This Court by an order dated 15.07.2010 observed that 2nd respondent therein on the one hand is filing the civil suits and entering into the compromise and on the other hand, lodged a complaint in respect of compromise before the Lok-adalat and observed that the remedy of the petitioner to challenge the Lok-adalath award is elsewhere and on that ground, by exercising the power under Section 482

Cr.P.C quashed the FIR and investigation in respect of the Crime No.53 of 2008. When the allegations in the compliant which is subject matter of Crime No.53 of 2008 and the complaints which are subject matter of Crime Nos.10 and 11 of 2009 are compared and read together it is clear that the self same allegations so far as petitioners are concerned and there is not even a single word against the petitioner which is not covered by earlier compliant in Crime No.53 of 2008 and in view of the above, the charge sheet in C.C. No.54 of 2012 is liable to be quashed.

10. When the same is quashed against some of the persons so far as any privy with them by the petitioner as S.I of Police concerned, at best it is prone to departmental proceedings by initiation of action and not prone to any criminal culpability.

11. Having regard to the above, from the dispute of civil nature with some criminal flavour brought within the purview of criminal prosecution, the CID in the investigation having filed charge sheet by not considering these material facts and from the subsequent development of CrI.P.No.2966 of 2012 of some of other accused of C.C. No.54 of 2012 questioning the cognizance taken by the learned Magistrate on the final report in Crime Nos.10 and 11 of 2009, ended in quashing in their favour by order dated 27.06.2014, same benefit the petitioner is also entitled to quash the Calender case proceedings.

12. It is needless to refer earlier civil litigation in O.S. Nos.115 and 117 of 1991 and 139 of 1992, when the compromise in O.S. No.187 of 2008 is very clear that parties agreed to withdraw the criminal complaint in O.S. No.53 of 2008 besides O.S. No.50 of 2008 and parties agreed not to take any grudge against each other and should not file any criminal cases in future, once the very criminal compliant registered saying investigation is withdrawn, the prosecution of the IO of the case under investigation equally no way survive. No doubt, in the CrI.P. No.2966 of 2012, it is the observation by another bench of this Court in the order dated 27.06.2014 in quashing the proceedings in C.C. No.54 of 2012 proceedings so far as accused Nos.1 to 6, by left open against the petitioner herein concerned by referring to Lok-adalat settlement and the Crime Nos.10 and 11 of 2009 are covered by self same

allegations of Crime No.53 of 2008 and what more observed is no doubt the close reading of three complaints (supra) indicates grievance of respondents 2 and 3 herein is against accused No.7, who is petitioner in C.C.No.54 of 2012 and not against other persons with whom she entered into compromise. Even therefrom once the very criminal case against the main accused persons of the disputed ended in compromise, the accusation against the petitioner who investigated the case for some time of Crime No.53 of 2008 if not the Crime Nos.10 and 11 of 2009, cannot be allowed to survive.

13. It is needless to say a perusal of the charge sheet in C.C.No.54 of 2012 at page No.3 speaks it is only A1 to A6 when approached and sought the help of petitioner/ accused No.7 for alleged eviction of de facto complainants (respondents 2 and 3 respectively) from the said house and to hand over the possession to accused No.1, he adopted the extra legal methods by abducting the de facto complainants/ respondents 2 and 3 on 17.03.2008 through his sub-ordinates having abducted and brought to the police and detained from 8.00 am to 4.00 pm without lawful authority and the other allegation is pursuant to which, accused Nos.1 to 6 as per their pre-plan from the said support of accused no.7 demolished the dwelling house in the absence of inmates with proclainer and coolies and looted cash of Rs.6,40,000/- and gold jewelry of 125 sovereigns, 3kgs of silver worth about Rs.10 lakhs on that day.

14. Even taken the allegations, the main perpetrators are A1 to A6 and the averments in Crime No.53 of 2008 that is subject matter of quash proceedings allowed by this Court in CrI.P.No.1647 of 2008 dated 15.07.2010. A perusal of the record speaks the O.S No.511 of 1992 filed by 2nd respondent—de facto complainant of Crime No.10 of 2011 and Crime No.11 of 2009 and the 2nd respondent—de facto complainant in Crime No.53 of 2008 and whose suit ended in dismissal on contest against more than 14 defendants based on for partition belying will set up on 09.02.1992 said to have been executed by her husband in her favour and later she along with her daughter de facto complainant of Crime No.11 of 2009 supra filed a memo dated 21.08.2006 and the same was recorded by the Civil Court in O.S. No.511 of 1992 that will set up her by the contest saying that the same is not

binding on the defendants. It is for the so called allegation of dispossession by taking them into custody and keeping in police confinement as even a subsequent outcome, needless to say I.A. No.510 of 2007 filed by her and her daughters to set-aside the compromise recorded in O.S. No.511 of 1992 even withdrawn by settlement including the suit O.S. No.187 of 2008 for permanent injunction vide Lok adalat settlement dated 31.03.2010 by receiving 32 lakhs, and the alleged dispossession is in relation to the same premises and that dispute is settled through Lok-adalat between the parties and from the allegation supra as the main perpetrators are A1 to A6 and they allegedly taken assistance of accused No.7 herein when the proceedings are quashed against A1 to A6 as detailed supra, nothing survive even against the petitioner/ accused No.7 for rightly rendered assistance to the decree holder and if exceeded any limit, it is at best prone to departmental proceedings but for any misconduct and not to continue criminal prosecution against him, for main perpetrators A1 to A6 proceedings are ended in quashing and this conclusion is fortified by the expression of the Apex Court in ***Ruchi Agarwal vs A.K.Agarwal***.

15. Accordingly, the Criminal Petition is allowed and all the proceedings relating to C.C. No.54 of 2012 on the file of VI Additional Junior Civil Judge, Guntur against the petitioner/ accused No.7 are quashed and the bail bonds of the petitioner/ accused No.7, if any, are cancelled. It is for the Department to initiate any regular department enquiry proceedings against the petitioner, if required.

16. Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.07.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: .10.2015

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