

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.3004 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash all further proceedings in C.C.No.222 of 2008 on the file of the Judicial Magistrate of First Class, Pithapuram, East Godavari District, registered for the offences punishable under Section 500 r/w.Sec.34 IPC in so far as which is against the petitioners who are shown as A1 & A2.

2. Heard the learned counsel appearing for the petitioners/A1 & A2, learned counsel appearing for the 2nd respondent/*de facto* complainant and the learned Additional Public Prosecutor, representing the State.

3. The 2nd respondent who at the relevant point of time was working as Judicial Magistrate of First Class (under suspension) filed two private complaints on the same day, i.e. on 13.10.2008. In addition to the petitioners who are shown as A1 and A2, who are the Chairman and Chief Reporter of TV-5, a News Channel, the complaints were filed against the non-petitioners/A3 to A7. The non-petitioner/A3 is one Madika Harathi, D/o.Nageswara Rao, who during the pendency of the cases died. The non-petitioner/A4 is a Mahila Activist at Visakhapatnam, whereas the non-petitioner/A5 is said to be a henchman of the non-petitioner/A4. The non-petitioners/A6 & A7 are the mother and brother-in-law respectively of the deceased non-petitioner/A3.

4. The non-petitioner/A3 originally filed a private complaint in June, 2008 against the 2nd respondent/*de facto* complainant herein on the file of the Metropolitan Magistrate, Visakhapatnam. Her grievance was that the 2nd respondent herein who was then a Practicing Advocate at Visakhapatnam has lured her and promised to marry her, and developed physical intimacy with her. Subsequently, the 2nd respondent herein became Judicial Officer and it is alleged that he refused to marry the non-petitioner/A3 publicly and instead, steps were being taken by the 2nd respondent herein and his people to perform his marriage with one Sowjanya, and

even the marriage cards are distributed. The non-petitioner/A3-Harathi further alleged that on being questioned, the 2nd respondent herein not only refused to marry her, but also advised that she can continue to be his kept mistress. At that point of time, the 2nd respondent herein was working as Judicial Officer in Khammam District.

5. Thereafter, the non-petitioner/A3-Harathi along with her people and certain Mahila Activitists started protest and also has given reports and interviews to Print and Electronic Media. On 28th, 29th of April, 2008 a detailed interview was given by the non-petitioner/A3 and her people which was telecasted in TV-5 News Channel.

6. This, according to the 2nd respondent/*de facto* complainant, amounted to defame him in the eyes of Public and his co-judicial officers and also it was in contravention of Section 67 of the Information Technology Act, 2000, since the said TV-5 reporting is said to contain obscene material wherein it is alleged to have contained certain clippings of intimate scenes in between the non-petitioner/A3-Harathi and the 2nd respondent herein which are said to have been recorded by the non-petitioner/A3-Harathi in her phone and while passed on to TV-5 News Channel which have been aired at them.

7. As already stated, on 13.10.2008 the 2nd respondent herein filed two private complaints, one was alleging the offence punishable under Section 67 of the Information Technology Act, 2000 r/w. Sections 34 & 149 of IPC and the another was alleging the offences punishable under section 500 r/w.34 IPC.

8. Vide orders dated 18.11.2008, the learned Judicial Magistrate of First Class, Pithapuram took cognizance for the offence punishable under section 500 r/w.34 IPC and summons were issued. The petitioners, who are A1 and A2, filed the present petition for quashing the same, on the ground that the learned Magistrate erred in taking the case on file without following due procedure, that the news telecasted by TV Channels was only the interview given by the non-petitioner/A3 who alleged that she was cheated by the 2nd respondent herein, being a judicial officer. It is further contended that the non-petitioner/A3 has also filed a complaint against the 2nd respondent herein before the District Judge and also before the High Court, on which a detailed enquiry was conducted after following the procedure and

found the allegations made by the non-petitioner/A3 against the 2nd respondent herein/the then judicial officer to be well founded and consequently, the Enquiry Officer recommended for dismissal of the 2nd respondent herein from service and accordingly, the Government, vide G.O.Ms.No.94, Law (LA&J-Home-Courts-C) Department, dated 14.08.2012, dismissed the 2nd respondent herein from judicial service. It is further contended that the learned Magistrate has committed serious irregularities in dealing with two complaints which resulted in serious prejudice to the petitioners/A1 & A2 and hence the same are liable to be quashed.

9. After having heard the submissions of the learned counsel appearing for the petitioners/A1 & A2 as well as the 2nd respondent/*de facto* complainant, and since there was complete confusion on the basis of the material placed before the Court, this Court directed the Registry to call upon the entire record in CC.No.222/2008 and also a report from the Deputy Superintendent of Police, Cyberabad Crime P.S, CID, Hyderabad as to what is the stage of investigation in Cr.No.3/2009 which was registered by it on 03.02.2009 at 10.30 a.m.

10. The records from the Court below have been received and the same have been perused.

11. Insofar as the report from the Cyberabad Crime P.S., CID, Hyderabad, with regard to the stage of investigation in Cr.No.3 of 2009 under Section 67 of I.T.Act is concerned, the learned Public Prosecutor has received detailed instructions and submitted the following aspects:-

- The 2nd respondent/*de facto* complainant while he was working as Judicial Magistrate of First Class, Khammam, submitted a written report to Khammam II-Town P.S., on 17-07-2008 which was registered as Cr.No.117 of 2008 for the offence punishable under Section 67 of the IT Act. The allegations therein were similar to the allegations that are contained in the present Cr.No.3 of 2009
- The 2nd respondent/*de facto* complainant also submitted a written complaint with similar allegations in III-Town P.S., Visakhapatnam, on 05-10-2008 which was registered as Cr.No.669 of 2008 for the offence punishable under Section 292 IPC.
- Cr.No.117 of 2008 which was registered by Khammam II-Town P.S., was transferred to Banjara Hills P.S., where it was re-registered as Cr.No.1040 of 2008 and thereafter it was transferred to

Visakhapatnam and it is not known as to what happened thereafter.

- With regard to Cr.No.669 of 2008, which was registered by III-Town P.S., Visakhapatnam, the police, after thorough investigation, filed a final report stating that it is a mistake of fact.
- The 2nd respondent/de facto complainant further filed a private complaint before the Judicial Magistrate of First Class, Pithapuram, on 14-10-2008, with the same allegations and that is the subject matter of Cr.No.3 of 2009.
- The 2nd respondent/de facto complainant filed another private complaint with same allegations on the file of the Judicial Magistrate of First Class, Pithapuram, alleging offence punishable under Section 500 IPC., and the same is the subject matter of C.C.No.222 of 2008.
- Insofar as the enquiry in Cr.No.3 of 2009 is concerned, it is stated that the Investigating Officer recorded the statements of '8' witnesses, collected and verified the C.Ds., in the presence of the technical experts and found that those were blurred images and were not pornographic, even though the witnesses claimed it to be pornographic.
- In view of the above reports and the opinion, the Investigating Officer has addressed a letter to the Additional Director General of Police, CID, Hyderabad, on 16-12-2010, seeking instructions in the matter.
- The opinion of the legal adviser, CID, Hyderabad, was obtained. It was opined that the T.V. Channels have aired only the news item in which the victim girl can only be identified in the C.D., but the man present with her cannot be identified. It is further reported that in order to avoid obscenity, the T.V. Channels have taken precautions by blurring the said scenes and that the said cassettes have also been verified by the technical experts.

The above statements are made by the learned Public Prosecutor after verifying the records received by him from the investigating agency insofar as the Cr.No.3 of 2009 is concerned.

12. What is apparent from the above is that the nature of allegations in all the police cases and private complaint is one and the same and briefly it is alleged that the victim girl, who unfortunately died in 2008, has given interviews to the print and

electronic media and has handed over to them certain video clips which were obscene in nature and since the electronic media has aired the same, that resulted in causing damage to the reputation of the 2nd respondent/de facto complainant and hence they are liable for prosecution. Complaints to that effect were filed at different places. One complaint was filed at Khamma where he was working as a Judicial Magistrate of First Class, another complaint was filed at Visakhapatnam III-Town P.S., and two private complaints were filed by him before the Judicial Magistrate of First Class, Pithapuram. As already stated, the incriminating material that is produced by the complainant in all the cases is the C.D. containing the news item aired by the T.V.Channels on 28-04-2008 and 29-04-2008 and as per the opinion of the technical expert, the said C.D. does not contain any material, which can be said to be obscene, for the reason that the images have been blurred and the male person seen in the C.D. cannot even be identified.

13. In view of the above, learned Counsel appearing for the petitioners/accused submits that it is a clear case where the 2nd respondent/de facto complainant has mis-used his official position and has lodged different complaints in different Police Stations by suppressing the fact of filing other complaints. It is submitted that as a matter of fact the High Court of Andhra Pradesh, on the administrative side, after thorough enquiry, found the 2nd respondent/de facto complainant guilty of the charges of having cheated the victim of the present case by developing physical intimacy with her promising to marry and subsequently denying the same. After a detailed enquiry and following the due procedure, on the recommendations of the High Court of Andhra Pradesh, the Government has issued G.O.Ms.No.94 (Law (LA&J-HOME-COURTS-C) Department, dated 14-08-2012, by and under which, the 2nd respondent/de facto complainant has been dismissed from the service. Learned Counsel further submits that in a departmental enquiry, conducted by the High Court of Andhra Pradesh, the DVDs etc., that are now part of the material record, were also produced and the allegations made against the 2nd respondent/de facto complainant as a Judicial Officer were found to be proved, which resulted in his dismissal. In that view of the matter, learned Counsel submits that the news agencies, which have aired the interview of the victim girl and shown certain clippings by taking precautions of blurring the images so as to avoid obscenity, cannot be said to have committed the offences alleged by the 2nd respondent/de facto complainant in his various complaints, which are registered under Sections 67 of I.T.Act, 292 IPC., and

500 IPC. Learned Counsel submits that the 2nd respondent/de facto complainant has clearly abused the process of law by launching different prosecutions and in view of the specific allegations against the 2nd respondent/de facto complainant having been proved in the departmental enquiry, continuation of criminal prosecution for having ventilated the complaint/grievance of the victim girl in its news bulleting cannot be said to be an offence.

14. Learned Counsel further submits that if the record of the Court below, which has been summoned, is carefully perused, it appears that the fact that the 2nd respondent/de facto complainant is a Judicial Officer had its own impact and influence while the two private complaints filed by the 2nd respondent/de facto complainant were under consideration of the learned Judicial Magistrate of First Class, Pithapuram.

15. The following aspects give credence to the submissions made by the learned Counsel appearing for the petitioners:-

16. It is noticed that on the same day i.e. on 13.10.2008 two private complaints were filed by the 2nd respondent herein, one was under section 67 of Information Technology Act and another was under section 500 IPC. The complaint filed under Section 500 IPC was given CC (SR) No.4101/2008, whereas the complaint filed under Section 67 of Information Technology Act was given CC (SR) No.4102/2008. CC(SR) No.4101/2008 filed under Section 500 IPC is numbered as CC.No.222/2008. The Office of the Judicial Magistrate of First Class, Pithapuram has put up an office note on 15.10.2008 on the private complaint and the then Judicial Magistrate of First Class, Pithapuram recorded the sworn statement of the *de facto* complainant, i.e. the 2nd respondent herein and posted the matter on 29.10.2008 for consideration. Thereafter, the matter was adjourned to 07.11.2008, 14.11.2008 and on 18.11.2008 the learned Magistrate passed the following order:

“Perused the record complainant placed cogent and convincing evidence to prove his *prima facie* case. Hence the case is taken on file under Section 500 R/w. Section 34 IPC on payment of batta through court and RP, issue summons 30.1.2009”

17. The same record, i.e. CC.No.222/2008 also contains the original material documents in so far as they are in respect of CC(SR) No.4102/2008 which was filed under section 67 of the Information Technology Act. As a matter of fact, both are different complaints and ought to have taken up separately. However, the original record shows that the original private complaint alleging offence punishable under Section 67 of the Information Technology Act also contains an office note dated 18.10.2008. On the said office note, the then Judicial Magistrate of First Class, Pithapuram made the following endorsements;

“18.10.2008: Heard the complainant, for consideration call on 29.10.2008.

29.10.2008: Complainant absent, petition is filed and allowed, for consideration call on 7.11.2008.

7.11.2008 Compalinant absent, petition is filed and allowed, for consideration call on 14.11.2008.

14.11.2008: P.O. is on leave, re-posted to 18.11.2008”

18. What happened on 18.11.2008 and thereafter to the complaint filed under Section 67 of Information Technology Act is not there in the record. As per the endorsements made by the learned Magistrate, the complaint under Section 67 of the Information Technology Act was not referred to the police, since the endorsements made on the office note in CC(SR) No.4102/2008 do not show that the matter was referred to police for investigation. However, the very same original private complaint in CC(SR) No.4102/2008 contain the following endorsement in original.

“Received on 3.2.2009 at 10.30 Hrs.

As per the contents of the complaint and instructions of the Addl.DGP, CID, AP, Hyderabad vide memo CNo.5072/C21/C10/2008 dtd:31/12/2008, I registered a case as Cr.No.3/2009 u/s.67 IT Act 2000 R/w.34 & 149 IPC and took up the investigation.

Sd/- (M.Ganapathi Rao)

Deputy Supdt of Police

Cyber Crimes P.S, C.I.D,

Hyderabad”

19. How the above endorsement was came to be made when the complaint was not referred to the police is not known. It is pertinent to note that when the complaint was being called for consideration till 18.11.2008, when it was sent to police for investigation is not known and how the original CC(SR) No.4102/2008 along with original endorsements of the concerned police, as stated above, came back to the Court is not known. Significantly, the private complaint under CC(SR) No.4102/2008 under section 67 of the Information Technology Act was also given number as CC.No.222/2008. As already stated, even though the police have registered the crime as Cr.No.3/2009 under section 67 of the Information Technology Act, nothing is known as to what happened thereafter, but, however, the said complaint is given number as CC.No.222/2008 along with other private complaint CC(SR) No.4101/2008 filed under section 500 IPC. The net result of the above is that the two different private complaints, one was filed under Indian Penal Code and the other was filed under Information Technology Act are being tried as CC.No.222/2008 even without there being an order taking cognizance of the offence under Section 67 of the Information Technology Act.

20. The learned counsel appearing for the petitioners/A1 & A2 submits that the above irregularities have been committed by the learned Judicial Magistrate of First Class, Pithapuram not by any inadvertence but because of the undue influence exerted by the 2nd respondent herein, who was working as Judicial Magistrate of First Class at Khammam and who was a native of Visakhapatnam, and if the entire record is perused, the said innuendo cannot be said to be without any basis.

21. The learned counsel for the petitioners/A1 & A2 further submits that as per the statutory requirements they were supplied with the copies of both the complaints which are part of CC.No.222/2008. As already stated, there is nothing on record to show that cognizance of the private complaint filed under section 67 of the Information Technology Act has been taken, even though the matter was called from 15.10.2008 to 18.11.2008 (the complaint itself was filed on 13.10.2008).

22. The learned counsel appearing for the petitioners/A1 & A2 further submits that the petitioners/A1 & A2 cannot be held to be responsible for the alleged defamatory news broadcast which is based only on the interview given by the victim girl and the petitioners/A1 & A2 being the Chairman and Chief Reporter of TV-5 News Channel, they cannot be said to be responsible for the said telecast. It is further submitted that

the main allegation is that the said telecast contain objectionable scenes which caused damage to the reputation of the 2nd respondent herein, but what is nature of the contents of the DVD are not known and the learned Magistrate has not looked into it before taking cognizance thereof. In that view of the matter, the learned counsel for the petitioners/A1 & A2 submits that all further proceedings in CC.No.222/2008 on the file of the Judicial Magistrate of First Class, Pithapuram in so far as the petitioners/A1 & A2 are concerned are liable to be quashed.

23. The other submission of the learned Counsel appearing for the petitioners/accused is that the case as it is on the file of the Magistrate is not maintainable for the reason that only the Chairman of TV-5 by name B.R.Naidu (A.1) and one District Reporter by name S.Mallikarjuna Rao (A.2) are being prosecuted without impleading the Company as such. It is submitted that when the offence is said to have been committed by a Company, only its Chairman or Director cannot be prosecuted without prosecuting the Company. In support of this contention, learned Counsel relied upon a decision of three Judge Bench of the Supreme Court reported in **ANEETA HADA v. GODFATHER TRAVELS & TOURS (P) LTD..** Even though, the said case arose under the provisions of the Negotiable Instruments Act, but there is also reference to the provisions of Section 85 of the I.T.Act. The Supreme Court held that keeping in view the anatomy of Section 85 of the I.T.Act, the analysis of Section 141 of the N.I.Act done herein would squarely apply to the I.T.Act, 2000. The Supreme Court further held that thus adjudged, the Director could not have been held liable for the offence under Section 85 of the I.T.Act, 2000, without impleading the Company and resultantly, the proceedings against the appellant Director was quashed. The Supreme Court further observed that since the Company was not arraigned as an accused, the proceedings as initiated in the existing incarnation is not maintainable either against the Company or against the Director. The Supreme Court also laid down that the provisions of Section 85 of the I.T.Act, 2000 are in pari materia with Section 141 of the N.I.Act. The relevant paras in the said Judgment are paragraph Nos.2, 3 and 64, which read as under:-

“In Criminal Appeal Nos. 1483 of 2009 and 1484 of 2009, the issue involved pertains to the interpretation of Section 85 of the Information Technology Act, 2000 (for short 'the 2000 Act') which is pari materia with Section 141 of the Act. Be it noted, a director of the appellant-Company was prosecuted under Section 292 of the Indian Penal Code and Section 67 of the 2000 Act without impleading the company as an accused. The initiation of prosecution was challenged under Section 482 of the Code of Criminal

Procedure before the High Court and the High Court held that offences are made out against the appellant-Company along with the directors under Section 67 read with Section 85 of the 2000 Act and, on the said base, declined to quash the proceeding.

The core issue that has emerged in these two appeals is whether the company could have been made liable for prosecution without being impleaded as an accused and whether the directors could have been prosecuted for offences punishable under the aforesaid provisions without the company being arrayed as an accused.

Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, the Criminal Appeal No. 1483 of 2009 is allowed and the proceeding against the Appellant is quashed. As far as the company is concerned, it was not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the director. As a logical sequeter, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the company in the present form are quashed.”

24. In view of the above authoritative pronouncement of a three Judge Bench decision of the Supreme Court, it can be said that the present complaint against the Chairman and a Reporter without impleading the Company as an accused is not maintainable and as has been done by the Apex Court, the present case is liable to be quashed.

25. In **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS**, the Apex Court has laid down the following seven points which need to be considered:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and

the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. In view of the foregoing discussions, I am of the opinion that continuing the present prosecution against the petitioners/accused is nothing but mis-use of the process of law and therefore the same is liable to be quashed.

27. In the result, the Criminal Petition is allowed. The proceedings in C.C.No.222 of 2008 on the file of the Judicial Magistrate of First Class, Pithapuram, East Godavari District, against the petitioners/A.1 and A.2 are hereby quashed.

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

M.S.K.Jaiswal, J

November, 2015

Dsr/smr