

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Cr.I.P.No.3445 of 2015

-

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners/A.3 to 9 and 11 of C.C.No.18 of 2013 on the file of the learned Judicial Magistrate of First Class, Special Mobile Court, Kurnool, seeking to quash the proceedings in the said Calander Case.

2. The averments in the petition are that the respondents 2 to 6/complainants herein filed a private complaint before the Judicial Magistrate of First Class, Kurnool, alleging that the petitioners/A.3 to 9 and 11) herein and others and respondents 2 to 6 are all working as Staff Nurses in Government Regional Eye Hospital (for short,'GRE), Kurnool in different cadres in same department and while so, the petitioners and others sent a petition dated 03.09.2011 to the DLSA making defamatory allegations about their conduct and behaviour and the same was enquired and later was closed. The complainants filed a private complaint before the learned JFCM, Kurnool, against the petitioners herein along with some others, stating that the petition contained defamatory words, thereby their image and reputation was tarnished and the learned Magistrate taken cognizance for the offence u/sec.500 IPC and numbered as C.C.No.149 of 2012 and later transferred to the Court of JMFC, Special Mobile Court, Kurnool and re-numbered as C.C.No.18 of 2013, that the petitioners are innocent of the alleged offence and mere giving complaint to the DLSA does not attract the ingredients of Section 500 of IPC, that as per the 8th Exception of Section 499 of IPC, accusation preferred in good faith to authorized person is not defamation against any person who have lawful authority over that person with respect to the subject matter of accusation and as per 9th Exception, imputation made in good faith by person for protection of his or others interests is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Further, in the instant case, the petitioners herein and others have preferred complaint before Lok Adalath in good faith for the protection of the interest of the hospital and to maintain good atmosphere at working place and there is no bad intention at all in taking the matter to the higher authorities, the DLSA., that the petitioners herein and A.1,2 and

A.10 filed Crl.M.P.No.1324 of 2013 in C.C.No.18 of 2013 on the file of the JFCM, Special Mobile Court, Kurnool, Seeking their discharge, but the said petition was dismissed on 02.06.2014. Later the A.1,2 and 10 approached the Hon'ble High Court, by filing Crl.R.C.No.1635 of 2014 wherein this Court granted interim stay in Crl.R.C.M.P.No.2678 of 2014 dated 13.08.2014 for limited period and later the same was extended from time to time till disposal of the said revision. The petitioners herein also filed Crl.R.C.No.2348 of 2014 and later this Court clubbed both the revisions and dismissed the same by giving liberty to the petitioners to invoke the inherent powers under Section 482 of Cr.P.C. by order dated 09.03.2015, that the complaint filed by the respondent Nos. 2 to 6 herein is mala fide, oppressive and vexatious and there is no prima facie case made out to connect the petitioners herein into this case and therefore continuation of the proceedings is an abuse of process of law and hence liable to be quashed.

3. Heard the learned counsel for the petitioners so also the learned Public Prosecutor for the 1st respondent-State and also the learned counsel for the 2nd respondent-complainant and perused the material on record.

4. Now the point for determination is whether the cognizance taken by the learned Magistrate for the offence under Section 500 IPC against the accused persons of whom the quash petitioners are A.3 to A.5, A.11, on the private complaint of respondents 2 to 6 of the quash petition, as C.C.No.18 of 2013 is unsustainable and liable to be quashed?

5. The fact that the 5 complainants and the 11 accused are working as staff nurses respectively in the GRE, Kurnool, not in dispute. The private complaint averments of the complainants supra at the cost of repetition, is that the accused persons sent a petition dated 03.09.2011 to the DLSA, Kurnool making defamatory allegations about the conduct and behaviour of the complainants in discharging their duties and the DLSA enquired the matter by issuing notices to the complainants from their presence, the contents made known not only to the staff of DLSA but also to the public who attended for enquiry in the DLSA and accused persons also marked copies of the complaint to the higher authorities and the DLSA closed the matter and therefrom the accused persons caused damage to the reputation of the complainants to degrade them in the eye of other colleagues and public. What the

so called defamatory words referred in the complaint para-5 are as follows:-

“The accused send a complaint to the DLSA containing defamatory words are like “ they developed a tendency to question every causing of their next superiors. They have accustomed to show at the Height of their voice in the wards, causing much annoyance to the patients and also causing irritation to other nursing staff” and they stated that “ All sorts of troubles being created with which we are fed up. They make their own false comments behind the back of other nursing staff as well as their attendance. With the result, the dignity of the Hospital as a whole is being lowered in the eyes of general public.”

6. It is not the complaint filed through learned Public Prosecutor though all are employees in the Government Regional Hospital, Kurnool, even though from complaint averments show the averments against them made by accused persons are about the behaviour of the complainants in discharging of their official duties. In fact, regarding the differences between the complainants and the accused persons, there was an enquiry conducted by State General Secretary of A.P. Government Nurses Association and the enquiry report clearly speaks the complainants are misbehaving with the accused persons herein, among the 5 complainants, 5th complainant S. KrishnaKumari not even paid subscription and they are not even continuing as members of the RGA Unit, and they are not able to mingle with the other members like accused persons and they are raising objections pointing out Smt. Subhashini Asirvadam(A.1) availing Special Casual Leave even though not entitled and that there is no supervision by Head Nurse over her in the night duties though for the two staff nurses on evening and night duties working and there is no practically necessity of supervision even the enquiry authorities i.e. the State President, General Secretary and Treasurer of the Nursing Association appraised the complainants about the right for availment of Special Casual Leave by Smt. Subhashini Asirvadam(A.1) and S.Krishna Kumari, the complainant No.5 is raising all kinds of allegations about A.1 and they are creating unnecessary problems and all the complainants not even paying the subscriptions to REH units and even the enquiring authorities appraised that all who worked wherever they are posted they pointed about Subashani Asirvadam(A.1) is working in theatre routine though her services are required being skilled staff by the Ophthalmic Operation theatre and the fault lies with the hospital Superintendent not calling them and sorting out the problems and not questioning, that they are creating troubles against the accused persons herein and against the complainants herein so many complaints given by

the accused and other persons about the sufferings the complainants are causing with their attitude and high voice and altercation, disreputing the hospital and even the complainants were shouting in public creating embarrassing situation in an intolerable manner with all disobedience and the majority nursing personnel who are accused herein are victims in the hands of the 5 complainants from their using unparliamentarily language even. A perusal of the report clearly speaks it is complainants that are in fault and the accused are innocent and filing of complaint to the higher authorities for smoothing administration or giving complaint to the DLSA for calling them for any enquiry can no way be called defamatory for nothing even from that what is produced in the complaint of their report to the DLSA as derogatory or defamatory per se to sustain the cognizance taken by the learned Magistrate is unsustainable thereby the proceedings are liable to be quashed.

7. In the result, the Criminal Petition is allowed and the proceedings in C.C.No.18 of 2013 on the file of the learned Judicial Magistrate of First Class, Special Mobile Court, Kurnool, against the petitioners/A.3 to 9 and 11 are quashed.

Dr. B.SIVA SANKARA RAO J,

Date: .12.2015

Vvr.