

THE HON'BLE MRS JUSTICE ANIS
CRIMINAL REVISION CASE NO.701 of 2010

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein challenging the judgment dated 11.03.2010, passed by the X Metropolitan Magistrate Cyberabad at Malkajgiri, in CrI.M.P.No.5155 of 2009 in C.C.No.727 of 2006 dismissing the petition against the petitioners for the offence punishable under Section 506 IPC.

2. The revision petitioners herein are A.2 and A.3 and 2nd respondent herein is the defacto complainant in C.C.No.727 of 2006 before the trial Court. For the sake of convenience, the parties, hereinafter, will be referred to as they are arrayed in the C.C. before the trial Court

3. The brief facts of the case are that the defacto complainant-2nd respondent filed a complaint F.I.R.No.104 of 2005 against the petitioners for the offence punishable under Sections 420 and 506 IPC, stating that he advanced an amount of Rs.1,00,000/- on 5.11.2003 and Rs.50,000/- on 2.12.2003 to one Smt. K. Rajyalaxmi-A.1; that A.1 issued two cheques dated 15.07.2004 and 18.07.2004, but the same were dishonored on presentation due to insufficient funds. Therefore, the defacto complainant filed O.S.No.1169 of 2004 on the file of the I Additional Senior Civil Judge, Ranga Reddy District, against A.1 for recovery of amount. The said suit was decreed on 01.08.2006 against A.1. Thereafter, the defacto complainant did not take any steps either under Section 138 of the Negotiable Instruments Act or under Order 21 of the Code of Civil Procedure for execution of the said money decree, but initiated the present proceedings adding the petitioners herein as A.2 and A.3 by making false allegations. The petitioners state that the 1st petitioner is the husband and the 2nd

petitioner is the son of A.1-Smt. K. Rajayalaxmi. On 26.07.2004 the 1st petitioner was transferred as Deputy Manager, SBI on promotion to Mummadivaram Branch, East Godavari District. The 2nd petitioner was working in Bangalore. Both of them were not in Hyderabad at the time of incident. The 1st petitioner herein lodged a complaint in Crime No.104 of 2005 on the file of Bommoru P.S., stating that his wife-A.1 was missing and was not attending her office since August 2004 and she completely left his house since 10.02.2005 and the police could not trace out her whereabouts. The entire complaint of the defacto complainant contains allegations regarding to loan transaction against A.1 only and there is no specific allegations against petitioners/A.2 and A.3. The petitioners state that they have filed CrI.M.P.No.5155 of 2009 under Section 239 Cr.P.C., before the X Metropolitan Magistrate, Cyberabad seeking to discharge them from the charges under Sections 420 and 506 IPC, and the said petition was partly allowed discharging the petitioners/A.2 and A.3 for the offence under Section 420 IPC and dismissed the petition in respect of the offence under Section 506 IPC. Aggrieved by the dismissal of petition for the offence under Section 506 IPC, the petitioners filed the present Criminal Revision Case stating that the defacto complainant filed the case against them with an oblique motive to harass them and they are not involved in the crime except the fact that they are the blood relatives of A.1.

4. The learned counsel for the petitioner argued that there was a money transaction between the defacto complainant and A.1 in respect of the said transaction A.1 issued two post dated cheques; that since the said cheques were dishonoured due to insufficient funds, the defacto complainant filed O.S.No.1169 of 2004 on the file of the I Additional Senior Civil Judge, Ranga Reddy District and obtained decree dated 01.08.2006 in his favour; and that after obtaining the said decree the defacto complainant neither filed a private complaint under Section 138 of the Negotiable Instruments Act, nor Execution Petition

under Order 21 C.P.C., but he filed a complaint in Crime No.104 of 2005 on the file of Bommuru Police Station for the offences under Sections 420 and 506 IPC. The learned counsel further contended that the petitioners never threatened the defacto complainant to attract the provisions of Section 506 IPC, on the other hand, the statement recorded by the police shows that the defacto complainant went to the house of the accused for repayment of the amount, there was some exchange of words between the parties for which no offence can be attracted for the offence under Section 506 IPC against the petitioners. In support of his case, the learned counsel for the petitioner relied upon the judgment of the Supreme Court in **Joseph Salvaraja v. State of Gujarat and ors**^[1].

5. On the other hand, learned counsel for the respondent/defacto complainant argued that the defacto complainant is a old person aged about 65 years. The trial Court after considering the facts and circumstances rightly held that there is a prima facie case against the accused, who threatened the complainant with dire consequences. Further, the incident was occurred in the last week of October, 2004, and admittedly as on that day A.1 was living with A.2 and A.3 and that as per Section 161 Cr.P.C statements of the witnesses recorded by the police during the course of investigation, attracts a case for the offence under Section 506 IPC. Learned counsel also argued that the truthfulness of the allegations is the subject matter of trial, which cannot be decided by this Court, and hence prays for dismissal of the revision case.

6. Now the point of consideration is whether the petitioners are entitled to discharge from the charge under Section 506 IPC, which was negated in CrI.M.P.No.5155 of 2009 dated 11.03.2010.

7. There is no dispute that A.1 died during the pendency of proceedings before the trial Court and A.2-the 1st petitioner herein

died during the pendency of the revision case before this Court and a death certificate in that regard is also filed and that the defacto complainant advanced an amount of Rs.1,50,000/- to A.1, who is the wife of the 1st petitioner and mother of the 2nd petitioner on 5.11.2003 and 2.12.2003. After expiry of six months, on demand, A.1 issued two post dated cheques dated 15.07.2004 and 18.07.2004 drawn on Canara Bank, R.P. Road Branch, Secunderabad. When both cheques were dishonored on presentation, the defacto complainant filed O.S.No.1169 of 2004 for recovery of money before the I Additional Senior Civil Judge, Ranga Reddy District, and obtained a decree on 01.08.2006 against A.1. Now the 2nd petitioner/A.3, who is the son of A.1 and A.2 filed the present revision case to set aside the order of the trial Court in CrI.M.P.No.5155 of 2009 dated 11.03.2010 with respect to the charge under Section 506 IPC.

8. The learned counsel for the petitioner filed Section 161 Cr.P.C. statements of P. Pratap Varma, Vaddireddy Suryanarayana Reddy and defacto complainant, recorded by the police during the course of investigation. As per 161 Cr.P.C. statement of Vaddireddy Suryanarayana Reddy the 2nd petitioner herein abused the defacto complainant and threatened that he will kill him. The defacto complainant also stated that the 2nd petitioner herein abused and threatened him with dire consequences.

9. The trial Court after perusing the statements of the witnesses recorded by the police during the course of investigation, rightly held that there is a prima facie, made out for the offence punishable under Section 506 IPC against the petitioners herein. Further the allegations made in the complaint have to be proved during the course of trial and if the petitioners have any grievance against the defacto complainant, they have to avail the remedies in a different forum. The 2nd petitioner has not made out any case to set aside the order of the X Metropolitan Magistrate, Cyberabad in CrI.M.P.No.5155

of 2009 for the offence under Section 506 IPC. Therefore, I am not inclined to interfere with the order of the X Metropolitan Magistrate.

10. Accordingly, the Criminal Revision Case is dismissed confirming the order in CrI.M.P.No.5155 of 2009 dated 11.03.2010 passed by the X Metropolitan Magistrate, Ranga Reddy District. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ANIS.

6th February, 2015
Js.

[\[1\]](#) (2011) 7 SCC 59