

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.68 of 2013

ORDER :

This Criminal Petition is filed by the petitioner/sole accused under Section 482 Cr.P.C to quash the proceedings in C.C. No.925 of 2012 on the file of VII Additional Chief Metropolitan Magistrate, Hyderabad. The Complainant/2nd respondent filed a private complaint against the petitioner for the offences punishable under Sections 446, 448, 420 and 506 I.P.C and the learned Magistrate has taken cognizance for said offences under Section 190 CrPC adopting the procedure under Section 200 to 204 CrPC.

2) The allegations in the private complaint are that he is the absolute owner, possessor and in enjoyment of the house bearing H.No.17-2-309/3/1, consisting of ground and first floors, admeasuring 102 square yards situated at Kurmaguda, Hyderabad, that he used to let out the same to others, that recently the same was vacated by one tenant and the complainant is in search of tenant for letting the said house, that the accused is one of the daughters of the complainant, that her marriage was performed with one Mr.Abdul Rahman in the year 1999 that since past several years, the accused developed grudge and different attitude towards the complainant and other family members of the complainant, that on

06/07.09.2012 at the night hours the accused broke open the locks of the said house and trespassed into the house illegally and started residing in the house, that on 07.09.2012 morning hours as usual the complainant visited the house and he was surprised and shocked to see that the accused illegally, unauthorisedly and unlawfully occupied the house of the complainant, when the complainant enquired and questioned the accused, she quarreled with the complainant and abused him in filthy and unparliamentary language and threatened the complainant with dire consequences and the husband of the accused has been a mute witness for all these incidents, that the accused with a malafide intention to grab the above property of the complainant broken the lock in the night hours on 06/07.09.2012, illegally trespassed and occupied the house, due to which the complainant lost his income source, i.e., rents from the house property, that she broke open the lock at night hours and without the knowledge of the complainant trespassed into the said house and also damaged the house property and she made internal structures in the house property, that when the complainant along with elders approached the accused and asked her to vacate the house, the accused threatened the complainant and his son with dire consequences and abused them in most vulgar and filthy language and warned the complainant and his son to implicate them in false criminal cases if

they again came to her and ask to vacate her from the said house, that on 18.09.2012, the accused made a phone call to the complainant and threatened to see his end if he chooses to lodge any police complaint. When the complainant approached the police, they did not take any action which made him to file the private complaint and the learned Magistrate directed the S.H.O, Madannapet Police Station for investigation and for report. Impugning the same, the petitioner/accused presented the quash petition.

3) The case of the petitioner is that she is the daughter of the complainant, who foisted a false case against her to evade his responsibilities as a father, that she is in occupation of the portion of the house bearing No.17-2-309/3/1, Kurmaguda, Saidabad, Hyderabad by virtue of the orders dated 06.09.2012 in D.V.C. No.388 of 2012 on the file of IV Metropolitan Magistrate, Hyderabad, that to dispossess the petitioner, the complainant and his son foisted the false case with concocted allegations and thereby prayed to quash the calendar case proceedings.

4) Heard learned counsel for the petitioner and also the learned counsel for 2nd respondent—complainant and perused the material on record.

5) Now, the points that arise for consideration is-

(i). whether the C.C. No.925 of 2012 proceedings pending on the file of VII Additional Chief

Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offences punishable under Sections 446, 448, 420, 427 and 506 I.P.C against the quash petitioner/accused are liable to be quashed in whole or to any extent and if so with what observations?

(ii) To what result?

POINT No.(i):

6) Before going into the further merits, it is necessary to mention in the pending petition, initially while ordering notice before admission, there was an interim stay of the calendar case further proceedings supra by order dated 04.01.2013 and the same was extended from initial four weeks and later extended from time to time and ultimately on 09.06.2015 the interim stay granted earlier was extended until further orders. It is while so, pending including the earlier interim stay extension petition in CrI.P.M.P.No.1966 of 2013 and hearing expedite petition in CrI.P.M.P.no.1815 of 2013 and the stay vacate petition in CrI.P.M.P.No.4536 of 2013 filed by the 2nd respondent a common order was passed on 09.06.2015 which reads as follows:

“None appear for the 2nd respondent.

However, after hearing the learned counsel for the petitioner and after having gone through the papers, I feel that the petitioner is reasonably justified in seeking a protection order in terms and in accordance with Section 18 of the Protection of Women from Domestic Violence Act, 2005 therefore, in furtherance of the said order, if the petitioner is staying at House.No.17-12-309/3/1 of Kurmaguda, Saidabad, Hyderabad, the same cannot be

considered, prima facie, as an act of trespass on her part.

Therefore, I find that the petitioner has made out a prima facie case for grant of stay of all further proceedings in C.C.No.925 of 2012 pending on the file of VII Additional Chief Metropolitan Magistrate, Hyderabad, initiated by the 2nd respondent-father of the petitioner.

Registry is directed to list the main case for Final Hearing in the usual course.”

7) As per the order supra, there was none appeared for the 2nd respondent-complainant for submitting any arguments in passing the order. It is needless to say even earlier the interim stay was extended until further orders and practically the stay vacate petition was dismissed by the order dated 09.06.2015. It is necessary to mention the stay vacate petition, the contest of the defacto-complainant as respondent to the quash petition is besides repetition of facts covered by the FIR allegations supra, further that he filed suit in O.S. No.1565 of 2012 on the file of the VII Senior Civil Judge Court, Hyderabad against the accused/quash petitioner under Section 6 of the Specific Relief Act for recovery of possession of the house portion and the suit is pending and for inaction of the police for the report on 17.09.2012 he filed the private complaint and after recording sworn statements of the complainant and his son as P.W-1 and 2, the cognizance of the offences was taken and summons were issued for appearance of the accused under Section 204 Cr.P.C in the C.C. No.925 of 2012 supra. It is further averred that the accused in filing the

quash petition obtained the interim stay by misrepresenting the facts with no even grounds to seek for quashing of the calendar case. It is averred that she filed a false and baseless case under the Prevention of Women from Domestic Violence Act, 2005 on the file of IV Metropolitan Magistrate, Hyderabad covered by D.V.C. No.388 of 2012 and obtained, by misrepresentation of facts, interim order in M.P. No.1154 of 2012 on 06.09.2012 with false allegations as if the complainant's father permitted her to stay in the house either he never permitted her to stay and on the other hand she illegally trespassed and occupied the premises and committed the penal offence and he filed counter in the D.V.C. case and contesting and the stay of the calendar case proceedings granted on 04.01.2013 is liable to be vacated.

8) A perusal of the interim order granted in the D.V.C. case on 06.09.2012 shows that the three respondents shown in D.V.C. case no other than her father and two brothers are trying to evict her and her children from the shared household and she is deserted by her husband and if she is going to be evicted by them she and her children will be on the streets and the respondents are to be restrained from committing the acts of domestic violence by entering into the premises to evict the D.V.C petitioner and the protection officer is directed to implement the order by taking police aid if necessary.

9) The sworn statement of the complainant and his son for taking cognizance of the calendar case of the offences covered by calendar case supra are nothing but repetition of complaint averments of complainant is absolute owner and portion of the premises leased out to tenants and Ex.P-3 is one of the rental deeds of July, 2005 executed by one of the tenants who vacated the premises by name Afroze Sultan and after that the premises lying vacant, he remodeled the premises for giving to the other tenants, and affixed let out board being the owner in possession to lease out and it was while so on 07.09.2012 when he went to the premises found different lock by broke open the three locks which he put up and it is the accused that trespassed and occupied the ground and first floor in order to grab the same without any right though she is his married daughter and when questioned she abused him and his family members and threatened to do away and she is not even paying any amounts for her illegal occupation.

10) The accused did not claim any ownership in the property. It is not even her case of the complainant who is her father is not the owner. The property proved standing in his name. Prima facie, there is an accusation of trespass. In fact from the complaint averments, there is no specific date and time of alleged trespass but for saying the accused broken the lock in the night hours on

6/7.09.2012 and trespassed and occupied. In the absence of positive material for complainant is not a witness if at all there is a trespass as to when and at what time in the night it taken place, so also from statement of his son in the pre-cognizance enquiry of there is house breaking in the night by the accused which they witness to take cognizance for the offence under Section 446 I.P.C. There is also no offence of cheating as it is not the case of accused deceived the complainant to deliver any valuable property or security. So far as the allegation of criminal intimidation concerned that is also vague and general allegations and there is nothing to say her threats caused any fear or alarm in his mind of any harm expected to be caused with certainty by the accused to attract the offence under Section 506 I.P.C.

11) What all further stated is the accused found in the premises of the complainant when he visited on the fine morning i.e., on 07.09.2012 when he went to the house and the locks put up by him were broke open by the accused in facilitating the trespass and that is the offence of mischief. What the offence of mischief under Section 427 I.P.C speaks is causing damage to the amount of Rs.50/- or upwards. The value of the lock and key that were broken in cause open the doors by the accused as per the complaint averments not given and if it is unless shown as Rs.50/- and above the offence that attracts is under Section 426 I.P.C and not under Section

427 I.P.C. Once taken of the three locks claimed damaged its value is Rs.50/- and above then it attracts Section 427 I.P.C for the alleged offence mischief. It is besides the other offence of house trespass under Section 448 I.P.C. These are the only penal provisions under which at best the learned Magistrate should have been taken cognizance but not for the offences under Section 446 or 420 or 506 I.P.C.

12) Thus, so far as the offences under Section 448 and 427 I.P.C concerned, the cognizance taken by the learned Magistrate no way requires interference from the accusation is there, for this Court by sitting against to quash but for cognizance taken for the offences punishable under Section 446, 420 and 506 I.P.C. It is because it is not even her case that pursuant to the D.V.C order only she entered the premises but for she claimed of it is the shared household and she is continuing since earlier. If at all that is the case, that is her part of defence to say there is no trespass on the alleged date of 07.09.2012 morning muchless any mischief by broke open the locks of the door. In the quash petition in the absence of cogent material to support that contention, prima facie the order taking cognizance from the accusation made out there are no grounds to quash as per the settled law.

13) In the result, the petition is partly allowed by

quashing the proceedings in C.C.925 of 2012 on the file of VII Additional Chief Metropolitan Magistrate, Hyderabad to the extent of the offences punishable under Sections 446, 420 and 506 I.P.C. only. So far as the other offences i.e., Sections 448 and 427 I.P.C concerned, the cognizance taken by the learned Magistrate no way requires interference from the accusation as stated supra.

14) Miscellaneous petitions pending, if any, in this petition shall stand closed.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.22.04.2016

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