

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7649 of 2014

ORDER :

This Criminal Petition is filed by the petitioners/ accused Nos.1 to 5 under Section 482 Cr.P.C to quash the proceedings in C.C. No.409 of 2014 on the file of XI Metropolitan Magistrate, Cyberabad at L.B Nagar, where the learned Magistrate has taken cognizance for the offences punishable under Sections 323 and 506 IPC, on a private complaint filed by 2nd respondent and after recording the sworn statement of the complainant, by impugning the cognizance taken by Magistrate and allotting the calendar case number.

2) A perusal of the impugned order of the learned Magistrate dated 10.03.2014 running in three pages with eight paras read with the complaint besides examined complainant as PW.1 and marked Exs.P1 to P6 (Copy of complainant representation to the Commissioner of Police, dated 21.05.2013, copy of complainant representation to the SHO, Chaitanyapuri dated 05.06.2013, copy of legal notice dated 29.10.2013, copy of photograph, copy of sale deed of complainant and copy of sale deed of accused No.1) show that the complainant purchased flat at Dwarapuri that was constructed in the residential apartment by accused No.1 in the land of accused No.1, that accused No.1 has been creating troubles to him in the parking area allotted to PW.1, though accused No.1 is not having parking area; that accused Nos.1 to 3, along with accused Nos.4 & 5, who were appointed as watchman recently, came to his house on 20.11.2013 and abused him in filthy language and have beaten him and accused Nos.1 to 3 threatened to kill him, if he complained against them and they threatened him to involve in criminal cases, that even he approached the police by filing complaint they did not chose to take any action and he got issued a notice to the accused through his counsel.

3) From a perusal of the material supra, it is evident that complainant purchased flat in Dwaraka Nilayam Residential apartment

and he was abused and beaten by accused No.1 and other accused present and shared common intention in making it a case for the offence under Sections 323 and 506 IPC, thereby taken cognizance in issuing process against them. In fact, a perusal of the sworn statement of complainant—LW.1 infact reads that in the year 2003 he purchased flat No.102 along with his car parking area in Dwaraka Nilayam Residential Apartment that was own cite of accused No.1 and constructed by accused No.1 with initial sanction by GHMC for ground + two floors and after occupying the plot, Accused No.1 along with Builder Tirumal Reddy constructed commercial shops in the parking area without permission and also constructed a pent house without permission and consent of other flat owners; that when they questioned accused No.1 and his family members, they are not cooperating and accused No.1 used to park his four wheeler and two wheeler in the parking area allotted to others. The accused No.1 started parking his car in the parking area allotted to LW.1-cum-complainant and used to threaten him several times, for which he approached the police against accused Nos.1 to 5 of whom, accused Nos.2 and 3 are sons of Accused No.1, Accused Nos.4 and 5 are husband and wife, who are appointed by accused No.1 as watchman recently and they came to his house and abused in filthy language and he was beaten on 20.11.2013 of whom accused Nos.1 to 3 threatened him, if he complained against them to kill him and even he approached the police, the police did not take any action out of influence of A.1. It is further averred that Accused Nos.1 to 3 used to bolt him from outside by confining him and he issued notice to them on 29.10.2014 and hence to punish them. The complainant filed the private complaint on 06.01.2014 for the alleged occurrence of beating and abusing on 20.11.2013.

4) Thus, from the above even on a perusal so far as the alleged occurrence dated 20.11.2013 of abuse and beating by accused persons having come to his flat, there is nothing to show that he approached the police and lodged the complaint immediately much less as required by Section 154 Cr.P.C forwarding a written report to the Superintendent of Police by registered post, if any cognizable offence committed for

registering the crime and if it is non-cognizable offence under Section 155 (2) Cr.P.C. to forward to Magistrate by said police. It is unknown, if at all, he complained to the police for the alleged incident occurred on 20.11.2013 and no action chose to taken by the police what prevented him to immediately file the private complaint instead of waiting till 06.01.2014 with unexplained and abnormal delay in filing the private complaint, by mentioning the several offences under Sections 143, 146, 153, 323, 342, 355, 357, 385, 387, 447, 452, 500, 504 and 506 IPC.

5) There is no any proof regarding any complaint given to police about the occurrence dated 20.11.2013 against accused Nos.1 to 5 immediately much less any explanation for the delay in filing the private complaint on 06.01.2014 at about 1 ½ month after the alleged occurrence. The unexplained delay and lack of proof regarding giving any police report for the alleged occurrence and lack of proof from non-examination of any other culprit version to any witness if at all it is within the flats of Dwaraka Nilayam Residential apartment much less at the flat No.102 the alleged occurrences took place with neighbouring flat owners 101 or 103 could be the witnesses, had there been any such galata of threatening and beating. Thereby as contended by the learned counsel for the petitioners, this version cannot be given credence except to say for the civil remedy with some criminal flavour because of the difference and disputes in relation to the parking area etc., they brought the criminal prosecution with vengeance that cannot be allowed under law as laid down by the Apex Court in ***State of Haryana vs Bhajanlal***^[1] but for to invoke civil remedy regarding the parking area or any unauthorised construction in the parking area including pent house, etc.,

6) Accordingly, the Criminal Petition is allowed and all the proceedings relating to C.C. No.409 of 2014 on the file of XI Metropolitan Magistrate, Cyberabad at L.B Nagar, are hereby quashed. The bail bonds of the petitioners/ accused Nos.1 to 5, if any, shall stand cancelled. The civil remedy to complainant, if any, is left open.

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

Dr. B. SIVA SANKARA RAO, J

Dt.27.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: 27.11.2015

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[\[1\]](#) 1992 SCC (CrI) 426