

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTY

Crl.P.No.14742 of 2016

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in P.R.C.No.5 of 2016 on the file of Judicial First Class Magistrate, Suryapet, Nalgonda District, registered for the offences punishable under Sections 384, 506 IPC and under Section 3(1)(x) of Scs & STs (POA) Act, 1989, against the petitioner/accused.

2. The petitioner is a Municipal Counsellor of Ward No.31 of Suryapet, Nalgonda District. The second respondent/de-facto complainant and his wife are running Sri Sivasai Hospital at Suryapet and that while they were constructing a building consisting of cellar and four floors by applying permission, the petitioner being a Counsellor questioned the de-facto complainant about the construction without obtaining prior permission from the municipal authorities and demanded payment of Rs.3 lakhs from him and when he refused, the accused abused him raising his caste name as "Neevu Lambadi Thandalo Putti Antha Pedda Hospital Kattadaniki Dabbulu Untai Kani Naaku Ivvatani Leva, Mee Lambadollaku Intha Pedda Hospital Avasarama". On the strength of the complaint, the police registered a case in Cr.No.368 of 2015 for the aforesaid offences.

3. During investigation, police recorded the statements of L.Ws. 1 to 4 i.e., Dr Jatoth Ramchandrar Naik, Banoth Bikku, Polagani Balaiah and Kirrakula Ramesh. Their statements clearly disclose about the abusive language used by petitioner against the de facto complainant raising his caste name in their presence and

therefore, the police filed charge sheet against the accused before the Judicial First Class Magistrate, Suryapet and the same was registered as P.R.C.No.5 of 2016, which is pending for committal by following the procedure under Section 309 Cr.P.C.

4. Now, the only contention of learned counsel for petitioner is that there is delay of 9 days in lodging the complaint by the de facto complainant and the said delay is sufficient to quash the proceedings. He placed reliance on the judgment of the Apex Court reported in **Bhajan Singh @ Harbhajan Singh V. State of Haryana**¹, wherein it was held as under:

“20. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint may prove to be fatal. In such case of delay, it also cannot be presumed that the allegations were an afterthought or had given a coloured version of events.

21. The Court has to carefully examine the facts before it, for the reason, that the complainant party may initiate criminal proceedings just to harass the other side with mala fide intentions or with ulterior motive of wreaking vengeance. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law”.

5. Even if the principles enunciated in the aforesaid judgment are applied to the present facts of the case, the de facto complainant

¹ (2011) 7 SCC 421

has to explain the reasons for delay during trial to be conducted and if he failed to explain the reasons for such delay, then, it is a ground for acquittal of accused, but at the stage of consideration of a petition under Section 482 Cr.P.C., the delay cannot be looked into. Even otherwise, the intention or deliberate implication of accused in the crime can be established only after trial, but not at this stage. Therefore, the principles laid down in the aforesaid judgment, while deciding an appeal against a conviction of accused after trial, cannot be applied to the present facts of the case.

6. Yet, another contention urged by the learned counsel for petitioner before this Court is that the allegations made in the complaint would not attract the offence punishable under Section 384 IPC since there is nothing on record to establish the demand of amount by the petitioner.

7. As seen from the FIR and the statements of witnesses examined during investigation, the petitioner demanded an amount of Rs.3 lakhs on the ground that the de-facto complainant is proceeding with the construction without obtaining prior permission of the municipal authorities. Mere demand would not attract the offence under Section 384 IPC, which deals with the punishment of extortion. Section 383 IPC deals with 'extortion' which envisages that 'whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property for valuable security anything signed or sealed which may be converted into a valuable security commits 'extortion'. In the present case, the petitioner demanded the amount by threatening the de facto

complainant that the construction was without permission. The Municipal Commissioner also issued proceedings dated 08.09.2015 in Lr.No.25/SMC/2014-15. At best, the Municipal Commissioner is entitled to take appropriate action for violation of the building rules or master plan, but the petitioner being a Counsellor of Ward No.31, where construction was going on, is not entitled to demand any amount and mere demand is sufficient to constitute the offence under Section 384 IPC in view of the definition of 'extortion' under Section 383 IPC.

8. In view of the aforesaid reasons, I find *prima facie* material on record and the allegations made in the charge sheet, if proved, would constitute an offence punishable under Section 384 IPC. Hence, I find no grounds to quash the proceedings in P.R.C.No.5 of 2016 on the file of Judicial First Class Magistrate at Suryapet, against the petitioner/accused.

9. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTY, J

19th October, 2016

sj