HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.3646 & 2975 of 2017

COMMON ORDER:

The petitioners respectively are A.1 to A.3 and A.4 to A.6 of C.C.No.910 of 2016 pending on the file of Judicial Magistrate of First Class, Srikakulam. It is outcome of private complaint filed by the defacto complainant that was taken cognizance by the learned Magistrate for the offences punishable under Sections 447, 323 & 506 read with 34 IPC.

Heard learned counsel for the petitioners and also learned Public Prosecutor representing the State and Sri V.V. Anagani, learned counsel for the defacto complainant, co-respondent to the 2 petitions.

The allegation in the private complaint dated 02.06.2016 reads that the alleged occurrence was on 31.05.2016 at about 04.00 AM. The averments refer the complainant as practicing advocate and his wife by name T.Varalakshmi and she was allotted Ac.0.02 cents by D-form patta vide proceedings No.861/10B dated 07.09.2010 by the then Tahsildar from eligibility having not possessed house or house site by the couple and she has taken possession and was contemplating to construct a house. A.1 who is rich and influential person in locality having a group house towards the southern side of D-form patta of the wife of the complainant having failed in his attempt to purchase the patta site of complainant's wife from the complainant refused to sell on his offer to purchase, started giving threats to vacate the complainant's wife from the patta site, outcome of 6 accused A.2

son of A.1, A.3 wife of A.1, A.4 brother of A.1 and A.5 & A.6 are parents of A.1 and A.1 with help of them tried to vacate her many a time but un-succeeded. It was while so on the fateful day 31.05.2016 of the accused formed into a group with dishonest intention at about 04.00 PM unable to bear the visit into patta site of the complainant's wife by complainant and his wife, from A.1 called the other accused over phone all gathered with weapons to cause hurt to the complainant and when complainant's wife questioned A.1 and his son A.2 forcibly puts their hands on the chest of the wife of the complainant by abusing her in filthy language and all entered highhandedly into D-Form patta site of the complainant's wife and threatened the complainant and his wife not to enter the site again with life threat and also demanded to pay Rs.5,00,000/- if at all to avoid any harm in their hands. It is averred that LWs.3 to 9 witnessed and advised the complainant to give police report. Having apprehended danger to their lives complainant returned and rushed to the police station, the police simply refused to register the case saying a civil dispute and thereby constrained to file the complaint.

The private complaint arrayed 6 accused were the respective quash petitioners referred supra, all inter-related from the cause title addresses show A.1 to A.3 are residents of Rajeev Nagar Colony, Srikakulam, whereas A.4 to A.6 are residents of Sairigam Village, Gotivada Post, Jalumuru Mandal, Srikakulam, and of them A.4 was Sarpanch of the village. The cognizance order of the learned Magistrate from the sworn statement of complainant and his wife where his wife stated on oath that at about 04.00 PM she and her husband (complainant) went to the land they found A.1 to

A.6 already criminally trespassed into the land and A.1 and A.2 put their hands on her chest and abused filthy and threatened her with dire consequences and remaining accused attacked them with knifes and for their cries the neighbours gathered. Whereas the defacto complainant in his sworn statement says when he and his wife went to his site at 04.00 PM, A.1 and A.2 and one Chalapathi Rao-LW.3, Adinarayana Rao-LW.7 and Dhanraju-LW.8 and others came to the field and they threw his wife by putting hands on her chest and abused in filthy language and remaining persons came there and bet and for the cries raised by him and his wife, the above persons demanded Rs.5,00,000/- for allowing him to construct house otherwise by threatening to kill them.

The cognizance order of the learned Magistrate shows that from sworn statements of the complainant and his wife, it discloses the complainant and his wife when present at the site on the date and time all accused trespassed and A.1 and A.2 pushed the wife of the complainant by putting hands on her chest and abused in filthy language and remaining persons also came there and bet him and his wife and they raised cries and accused also demanded Rs.5,00,000/- for construction of house otherwise threatened to kill and there is prima facie case to take cognizance against A.1 to A.6 for the offences punishable under Sections 447, 323 & 506 r/w 34 IPC and against A.1 and A.2 for the offence under Section 354 IPC.

The cognizance order is impugned in the quash petitions with the contentions that the complaint averments are contradictory to the sworn statements of complainant and his wife

with no any offence made out to believe and the taking of cognizance without even examination of any independent witness out of the witnesses cited in the complaint is unsustainable and baseless and out come of non-application of mind to the facts and ingredients of the offences and thereby liable to be quashed.

Whereas it is the submission of the learned counsel for the defacto complainant in the 2 quash petitions that the cognizance order is supported by reasons and just and they have to face the pre charge inquiry of the private complaint procedure and there is nothing to quash the proceedings and thereby sought for dismissal. Learned Public Prosecutor also submitted in support of the cognizance order.

As referred supra the facts no way require repetition in answering the quash petitions. In fact a perusal of the cause title, addresses of A.4 to A.6 show they are of different village of Srikakulam Rural Mandal. The alleged offence stated occurred at 04.00 AM in the complaint whereas in the body of the complaint and sworn statements of 04.00 PM even taken as 4.00 PM and from the complaint averments the complainant and his wife went to the site at 4.00 PM and on seeing the A.1 unable to bear with entry into their site revolved against them and he immediately called other accused over phone and all of them gathered and armed with weapons to cause hurt to the complainant. It is highly impossible within no gap of time for A.4 to A.6 to come to the phone call from their residents at a different Rural Mandal to the place of offence at Srikakulam Town where the alleged site is situated. It is nothing but a false implication on its face so far as

A.4 to A.6 concerned, apart from no specific overt act against each of them attributed much less as to when they came and at what time if at all they came subsequently from the Rural Village or Mandal which is at a far place, suffice to say the proceedings against A.4 to A.6 are liable to be quashed. Even so far A.3 wife of A.1 concerned there is no whisper of any specific overt act against her either in the complaint or in the sworn statement, thereby proceedings against her are also liable to be quashed.

Now coming to A.1 and A.2 from very complaint Para 4 which is just referred above A.1 on seeing complainant and his wife came to the site at 4.00 PM unable to digest their visit called other accused over phone and all of them gathered with weapons with dishonest intention to cause hurt, A.1 and his son when the wife of the complainant asked about their highhandedness pushed her forcibly by putting their hands on her chest and by abusing her in filthy language. Whereas coming to the sworn statement of wife of the complainant the so called victim of the alleged episode, by the time she and her husband went to their land at 4.00 PM, all the accused 1 to 6 criminally trespassed then A.1 and A.2 put their hands on her chest and pushed aside and abused in filthy language and threatened her with dire consequences and remaining accused attacked them with knives and for their cries neighbours rescued them. It is running contrary to what the defacto complainant stated of there was no body by the time he and his wife went there and it is subsequent to that A.1 on seeing them at their D-Form patta unable to digest called the other accused over phone and A.1 and A.2 committed the so called acts on his wife. Whereas the 3rd version of him in his sworn statement

at the cost of repetition is that on 31.05.2016 at 4.00 PM he and his wife present in their site, A.1 and A.2, Chalapathi Rao and others came to the field and above persons threw them by putting hands on chest of wife of the complainant and abused in filthy and remaining 3 persons came there and bet him and his wife. This 3rd version is running contrary and in fact the alleged persons besides A.1 and A.2, Chalapathi Rao, Adinarayana Rao and Dhanraju etc., all threw his wife by putting hands on her chest. Suffice to say from these contradictory statements the very substratum of alleged occurrence his riddled with material contradictions even to take cognizance for no offence made out against A.1 and A.2 also including for the alleged offence under Section 354 IPC.

Having regard to the above, the quash petitions are allowed and the proceedings are quashed.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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