

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2459 of 2017

ORDER:

The petitioners are A.1 & A.3 among 4 accused of C.C.No.9 of 2017 on the file of learned XV Metropolitan Magistrate, Cyberabad at Medchal. Originally crime No.442 of 2016 dated 24.08.2016 was registered by Pet Basheerabad Police Station, Cyberabad West, for the offences punishable under Sections 171-G, 171-I, 196, 199, 327, 405, 406, 415, 417, 499 & 500 r/w 34 IPC, which is outcome of private complaint of the 2nd respondent-defacto complainant referred to the police by the learned Magistrate and the police after investigation filed final report of civil nature, on 20.11.2016 and the defacto complainant aggrieved therefrom filed the protest application vide SR.No.6113 of 2016 of said crime No.442 of 2016 against said final report of the crime and it is by the impugned order dated 05.01.2017 by the learned Magistrate taken cognizance against them for the offence punishable under Section 506 IPC based on the sworn statement of the defacto complainant by ordering to issue summons. It is impugning the same, the present quash petition is filed.

A perusal of the police final report from original report registered as crime supra shows that defacto complainant is also one of the members of Oorjita Grande vie Residents Welfare Association of Gundla Pochampalli Mandal vide society registration No.996/2014. It is with the allegation that the builder of society supra failed to provide proper amenities and facilities as per the agreements entered with him and some of the villa owners colluded with the builder and formed a registered society in August 2014

and complainant and the other villa owners when questioned builder about the incomplete facilities and also the Executive Committee members of the said society many a time to fix monthly maintenance properly on square feet area wise and provide facilities, there is no response and they were avoiding and while so in October 2015 one Ganesh bet the defacto complainant with stick and when lodged complaint before the SHO, Pet Basheerabad Police Station against the executive committee members and the concerned security person Ganesh, the police did not take action and the builder and the so called executive members were dragging on to solve the community problems and failed to comply and there are several works left incomplete to be completed by the builder and the present executive committee without elections pretending by managing as if executive committee members and collecting maintenance and not providing facilities and implementing the services and with allegation that the executive committee cheated and they are collecting penalty from residents and harassing to have unlawful gain and he is victim of cheating among others. It is during investigation having recorded the statements of complainant and several witnesses and prepared scene observation report and final report filed stating the builder of the villa assured that he will provide amenities and facilities including to open second gate, intercom, fixation of monthly maintenance as per square feet, tiles in and around/behind the swimming pool area and provide club house facilities, gym/play equipments, CC cameras at main gate and other suspicious places, underground cabling systems etc., and so far as even these amenities concerned, it is purely a civil dispute and no offence that attracts. In the

protest petition, it is averred that police not acted fairly including on original report of the defacto complainant dated 09.08.2015 and they deliberately and intentionally filed the referred report which results in grave injustice to him, even from the private complaint he filed that was referred by the learned Magistrate for investigation and thereby the protest with a request to take cognizance by recording the sworn statement etc.

The sworn statement of the defacto complainant discloses that in October 2015 regarding his business letter came from RBI, the colony security person kept with him for 2 months and given him only after two months from which he suffered loss of so much of amount and put to mental agony and he asked the community security person for the delay in handing over the letter and he bet him with stick with the support of executive committee and on same day he lodged complaint, police did not take action and from executive committee members supported the security man, which made him to file the private complaint and with these facts covered in FIR he mentions that the executive committee members also cheated him and other residents and not providing proper facilities and physically and mentally harassing him and his family by threatening to kill him and unlawfully disconnected services and also issued false legal notices and creating public nuisance in the vicinity and defamed him.

It is therefrom, learned Magistrate taken cognizance for the offence punishable under Section 506 IPC. So far as the criminal intimidation concerned, it is not there either in the original report or in the protest petition including from the police final report to attract offence under Section 506 IPC for which it must create fear

in the mind of the person of danger to life and in the absence of which every threat is not attracting the offence under Section 506 IPC.

Having regard to the above, there is nothing to continue the proceedings pursuant to the cognizance order of the learned Magistrate on the protest application for the offence under Section 506 IPC.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioners.

Consequently, miscellaneous petitions, if any shall stand closed.

Date: 14.09.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

