

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.8259 of 2011

ORDER:

1. The petitioners, who are arrayed as accused Nos.1 to 8 in Crime No.81 of 2011 on the file of Devarapalli Police Station, West Godavari District, filed this petition under Section 482 Cr.P.C. seeking to quash the proceedings against them in the above crime.

2. The contention of the petitioners is that they are falsely implicated and that the allegations do not disclose any offence under Section 3(x) of SCs & STs (POA) Act and Section 506(3) r/w 34 IPC. It is contended that the scene of offence alleged is Ava tank, which is not a public place and that Mungara Devaiah, President of Fisheries Co-operative Society Limited gave a report to the Tahsildar and Executive Magistrate of Devarapalli against the de facto-complainant and his caste people alleging that the de facto complainant and his caste people filed a false criminal cases against them and causing obstructions to their rights, basing on which, the M.R.O. passed an order against the de facto complainant and others and then, the petitioners filed criminal cases against the de facto complainant and others in Crime Nos.76 and 78 of 2011 and as a counter blast, the de facto complainant filed the present case against the petitioners.

3. On the other hand, the learned Public Prosecutor submitted that the incident in Crime No.81 of 2011 is on 31.5.2011, whereas the incident in Crime No.78 of 2011 is dated 5.6.2011 and the complaint is dated 6.6.2011 and in Crime No.76 of 2011, the incident is on 3.6.2011 and that there is no motive or intention on the part of the de facto complainant to file a false case against the petitioners and that there is a prima facie material in

the complaint and the actual words uttered by the petitioners are specifically mentioned.

4. A perusal of the record goes to suggest that the de facto complainant and others belong to Scheduled caste, whereas the petitioners- A1 to A8 belong to fishermen community. The dispute is with regard to the Ava tank.

5. In the case of **Gorige Pentaiah Vs. State of Andhra Pradesh and others**¹, the Hon'ble Supreme Court held that "respondent No.3 was not even in possession of the land in question, the allegation made in the complaint that the appellant demolished the wall on 14.6.2004, could not arise. The allegations are totally baseless and without any foundation. Hence, the criminal complaint filed by 3rd respondent was totally false and frivolous and the same was filed with oblique motive." It is further held that "the allegations, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. Where the Criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the inherent powers under Section 482 Cr.P.C. can be exercised."

6. In the present case, the facts are different. As contended by the learned Public Prosecutor, the complaint in Crime No.76 of 2011 is with regard to the incident occurred on 3.6.2011 and the complaint in Crime No.78 of 2011 is with regard to the incident dated 5.6.2011 whereas the present complaint in Crime No.81 of 2011 is with regard to the incident

¹ (2008) 12 SCC 531

dated 31.5.2011 at 12.30 p.m., which is earlier to the date of offence in Crime Nos.76 and 78 of 2011. The names of the petitioners were specifically mentioned in the complaint. There is specific allegation against them that they abused the de facto complainant touching the name of his caste in words “Mala Bastards how dare you to come to our tanks”. In the complaint itself, the de facto complainant explained the words. As per the contents therein, immediately after the said occurrence, the de facto complainant approached the elders by name Upparhi Chandra Rao, Mandapathi Kutumbarao, Venu and Venkatesh and informed the incident. The elders advised that they will talk to the petitioners and settle the dispute. On 8.6.2011 on the date of complaint, the elders expressed their inability and advised the de facto complainant to do whatever he can.

7. The report of the Executive Officer on the allegations made in the complaint of Mungara Devaiah, dated 27.5.2011 clearly goes to show that there is a dispute with regard to fishing rights in Ava tank. The contention of the petitioners is that Ava tank is not a public place. In the decision relied upon by the learned Counsel for the petitioners, it is specifically pointed out that “the complainant ought to have alleged that the accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No.3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. So, according to the Section 3(1)(x) of the SCs and STs (POA) Act, criminal intimidation or humiliation must be done within the public view.

8. In the circumstances of the case, I find that there is a prima facie case to proceed against the petitioners herein and absolutely, there is no material showing that continuation of the proceedings against the petitioners amounts to abuse of the process of Court.

9. Accordingly, the Criminal Petition is dismissed. Consequently, interim stay granted on 12.9.2011 in Crl.P.M.P.No.8844 of 2011 is vacated and the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 23rd October, 2017
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