

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.139 of 2017

ORDER :

The petitioner is the sole accused in C.C.No.239 of 2014 on the file of Judicial First class Magistrate, Jagtial, where the learned Magistrate has taken cognizance for the offence punishable under Sections 447, 323, 504 and 506(ii) I.P.C. which is outcome of a private complaint of the de facto complainant, no other than his brother's son (paternal uncle) for the alleged occurrence on 18.04.2013 at the field claimed that of the complainant for the accusation saying accused claimed as it is part of the ancestral property and complaint has no right to make it into plots by conversion for alienation ignoring his rights in saying that was the cause with which the accused along with his wife and another person (LW.4) by name D.Naresh @ Nandu trespassed and criminally intimidated and also beat causing bleeding injury and abused by intentional insult. The private complaint filed was on 10.05.2013, no doubt, stating immediately after the occurrence, he approached the Station House Officer, Jagtial town Police Station and reported the occurrence vide receipt No.508, however, police did not take action which made him to file the private complaint and that was consequently referred by the learned Magistrate for investigation in registering crime No.130 of 2003, from which the final report

was filed. Though F.I.R. speaks of three accused, only against the revision petitioner as sole accused taken cognizance. It is after cognizance, summons, appearance and supply of copies in the course of hearing, before charges the petitioner/ accused sought for discharge vide CrI.MP.No.101 of 2016 saying no offence is made out to take cognizance by the learned Magistrate from the even taken on face value of the entire prosecution material summed up in the so called charge sheet including from examination of A3 as LW.4 by name D.Naresh @Nandu. Hence, to set aside the order of dismissal of the discharge application by the learned Magistrate dated 02.11.2016 and allow the same.

2. The learned counsel for the revision petitioner reiterated the said contentions by drawing attention of this Court to the F.I.R. covered by the private complaint and the statements of witnesses including of LWs 1 and 4 among others and also the provisions.

3. Whereas, it is the submission of the learned Public Prosecutor representing the State that the order of the lower Court is sustainable and for this Court within the limited scope of revision, there is nothing to interfere and hence to dismiss the revision.

4. Heard and perused the material on record.

5. So far as accusation regarding trespass under Section 447 IPC concerned, it is the claim of the complainant that the

subject property is the exclusive property and there is umpty of litigation including before executing Magistrate and civil Court in relation thereto and it is matter to be decided, if at all entered is not a trespass and a bonafide entry in seeking a claim under a bonafide right and it is thereby premature for this Court that too, while sitting in revision against the dismissal discharge order of the learned Magistrate for that offence alleged concerned.

6. Coming to Section 323 I.P.C. it is the clear version of the complainant of he sustained a bleeding injury. A perusal of the charge sheet no way shows any medical examination much less any doctor certificate. However, he was beaten is also the statements of others for a matter to be appreciated, if at all there is no medical certificate and examination for such a bleeding injury as one of the favour circumstances to the accused. However, premature even to accept that contention for the purpose of interfering with the dismissal of the discharge order.

7. Now, coming to the offence under Sections 504 and 506 I.P.C. no doubt, so far as offence under Section 504 I.P.C. concerned, it is not mere insult, it must be an intentional insult and not only the intentional insult but must be with intent to provoke breach of peace and a perusal of the averments, totally lacking the said ingredients to make out the offence under Section 504 I.P.C. and also with reference to the expression of

the Apex Court in *Fiona Shrikhande v. State of Maharashtra* (AIR 2014 SC 957).

8. Now coming to the offence under Section 506(ii) I.P.C., from the very final report, the alleged trespass with crowbars or its seizure or any use are showing lacking of Section 506 I.P.C. with reference to Section 503 IPC speaks is an intimidation. The intimidation with an intent to create a fear or alarm. So far as Part-I and Part-II concerned, the alarm or fear must be to cause offence punishable with death or imprisonment by life or a term which may extend to 7 years or to impute unchastity to a woman. Here, it is lacking of verbal expression as to do away itself is not suffice but for it created alarm of likely to commit thereby, Part-II has no application at best Part-I of Section 506 I.P.C. on face value of the material on record.

9. Accordingly, the revision is allowed to the said extent, which is without prejudice to the defence of the petitioner/ accused in allowing the discharge application to the extent for the offence under Section 504 I.P.C. and by converting the offence under Section 506(ii) I.P.C. to 506(i) I.P.C.

10. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01-02-2017
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