

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.5085 of 2009

ORDER:

The petitioners 9 in number are the accused in crime No.103 of 2007 of II Town police station, Chittoor, registered for the offences punishable under sections 448, 341, 323, 324, 506 r/w 34 IPC, which is outcome of the complaint given by the 2nd respondent B.Ramesh Reddy. Among the 9 accused of the above crime, A.8-K.Pandu died on 09-01-2013 pending the quash petition and death certificate was filed with MP.No.11481 of 2016 in this regard on 19-07-2016 and same is now recorded by abating the case so far as A.8-K.Pandu concerned since died as referred supra. There are 3 respondents one K.Neelakantan, HC 1207, Chittoor, it appears shown originally as respondent No.2 in the quash petition originally sought for his deletion by filing Crl.M.P.No.4821 of 2009 and consequently sought for inclusion of B.Ramesh Reddy, respondent No.2 herein as respondent No.2 in the place of Neelakantan by filing on 16.07.2009 that were allowed. It is while so Neelakantan also sought to be impleaded as respondent No.3 in Crl.M.P.No.14130 of 2014.

The police after investigation filed final report in the form of charge sheet and the learned Magistrate has taken cognizance thereon for the offences supra on 31.10.2007 by allotting CC.No.371 of 2009, later same was transferred from IV Additional Judicial Magistrate of First Class, Chittoor to Special Mobile Judicial Magistrate of First Class, Chittoor and re-numbered as CC.No.441 of 2009. The FIR which set the law in motion on 12.08.2007 shows the said Neelakantan, HC recorded the

statement of said B.Ramesh Reddy based on the hospital intimation saying he was injured by the accused persons and brought by his friend Madhavan from Mangasamudram where the occurrence took place saying Neelavathi-A.2, Bhaskaramma-A.3, K.Kishor-A.4, K.Kalyana Kumar-A.5, K.Amrutha-A.6, K.Savithri-A.7, K.Pandu-A.8 & K.Dhanamma-A.9 beat with hands and sticks at about 3:50 PM and admitted in the hospital at 5:10 PM and the statement reads from the above MLC particulars that on that day at about 1:30 PM when he was at house after lunch in sleep, one person came on motorcycle woke him up telling he was police constable No.2863 by name SS.Babu @ Devudu and asked to come with him by taken him forcibly on his Suzuki motorcycle bearing No.AP-03-K-3251 to the house of Kishore advocate of Mangasamudram(A.4) and told the person who are inside the house named supra that said Ramesh Reddy is the person who made nuisance against the whom case was made and he should not come again and fight with them in future, hence to break his legs and he has taken available stick there and bet him on back side, legs and hands and caused injuries and Neelavathi and Bhaskaramma caught hold of his hair and beaten with hands and legs by knocking him down, Kishore and Kalyan Kumar scolded him in filthy not to let off him and beaten with hands and legs by lift him up and down, Amrutha, Savithri, Pandu and Dhanamma also beaten him with hands and legs by throwing him down and again constable SS.Babu told him that this is not sufficient and taken him to prostrate before Bhaskaramma and to tender apology and he should not be seen in this street and area and if so he will be shooted. Having suffered injuries and unable to walk he could

come out and his friends Madhavan, Suresh and Muni who came there in search of him asked what happened and he explained to them they brought him and admitted in the Chittoor Hospital where he was under going treatment and the statement recorded by the HC Neelakantan from which said Neelakantan registered the crime for the offences supra.

The police final report from the investigation by recording the statement of B.Ramesh Reddy as LW.1 with selfsame facts besides 6 other witnesses including the Government Medical Officer, Chittoor Hospital and collected the wound certificates from the Government hospital and that there are no any blood injuries found and the injuries are simple in nature from what he complained of only body pains and he was admitted at 3:50 PM and examined at that time and stated that he was beaten by known persons and brought by his friend Madhavan from Santhapeta. The police final report speaks that complainant is resident of Mangasamudram, Santhapet of Chittoor and by carried down the facts in gist of the FIR stated further that after registration of the crime from the 6 witnesses examined to the occurrence by recording their statements and scene of offence examined and rough sketch prepared and A.1 surrendered before the Court and obtained bail on 14.08.2007 and others on 17.08.2007 and Government Doctor examined B.Ramesh Reddy LW.1 and opined that injuries are simple and the accused are liable for the offences. In fact the learned Magistrate has taken cognizance for the offences punishable under sections 448, 341, 323, 324, 506 r/w 34 IPC against A.1 to A.9 on 31.10.2007 by

ordering summons to the accused for their appearance on 13.12.2007.

So far as the offence of alleged trespass into the house of the complainant, if any concerned, it is only against one constable SS.Babu who is A.9 and not against A.1 to A.8. Even so far as the alleged wrongful restraint, it is not the case that he was restrained by any of the accused to apply the Section 341 IPC to the facts. So far as the offence under Sections 323 and 324 concerned, the injuries are simple and there is nothing from the police final report of any sticks seized much less any description given saying those are deadly or dangerous weapons of causing voluntary simple hurt with those to attract Section 324 IPC, but for the wound certificate even with reference to the statement of the defacto complainant in registering the crime and the statement during the investigation only Section 323 IPC, but for not a case of any others witnessed the occurrence while any of the accused allegedly beating the defacto complainant. So far the criminal intimidation concerned, it is only against said Babu-A.9 and not against any of the other accused either from the statement registered as FIR or from the statement during investigation of the defacto complainant. In this background, suffice to say the learned Magistrate did not properly consider the material in taking the cognizance for the offences against the respective accused of what offence made out and against whom from the police final report with part II case diary with reference to FIR and investigation.

Now coming to the quash petition averments in seeking to quash said cognizance order in toto impugning the sustainability of the crime and final report and cognizance respectively that the

other accused are shown as children of A.3 of Mangasamudram, Santhapeta, Chittoor at house bearing No.5-519, there is house No.5-501 part of it is a constructed one and other part left vacant to which PV.Chakravarthy is the neighbour. Said Chakravarthy encroached upon said vacant portion for which the petitioners/accused objected in order to silence the petitioners said Chakravarthy instigated his relatives who are the auto drivers to create nuisance and miscreants used to sit on the parapet wall opposite to the house of the petitioners No.5-519 including in drinking liquor and throwing empty bottles for which the accused persons herein particularly A.3 objected and said Chakravarthy and his henchmen about 20 members on 12.06.1999 combinedly entered the house of A.3 and assaulted and injured the family members by abusing in filthy and the A.3 Bhaskaramma presented a complaint to the II town police station, Chittoor, who registered the crime No.56 of 1999 against said Chakravarthy and other accused total 20 in numbers for the offences punishable under Sections 147, 148, 448, 323, 324, 352, 447, 448, 506, 509 r/w 149 IPC in CC.No.259 of 2000 including said Chakravarthy as A.8 and the case after trial ended in conviction by the judgment dated 10.05.2007 against Pratap, Jayachandra and Jahingir for the offence under Section 324 IPC and so far as other accused A.15, 17 and 20 case is abated as died and against A.16 split up as CC.No.172 of 2005 and for others no offence made out. As per the quash petition further averments, few days of the said crime No.56 of 1999 registered the said Chakravarthy and 8 others combinedly came in auto and attacked and injured Kalyan Kumar (A.5 herein) on 28.07.1999 at Aragonda bus stop road and on his report, II

Town police registered another crime No.108 of 1999 and the case after trial against 8 accused among said Chakravarthy as A.4 ended in conviction on 10.05.2007. Chakravarthy filed criminal appeals and made all sorts of pressure to come out of the conviction judgments pending appeal to withdraw the case by engaging anti-social elements by started pressuring also and part of the same instigated B.Ramesh Reddy, the defacto complainant herein, cousin of said Chakravarthy to implicate the petitioners herein and it is part of their nefarious conspiracy and plan on 19.07.2007 Ramesh Reddy and his accomplice Madhavan trespassed in to the house of the petitioners/accused herein at door No.5-501 assaulted A.3 and torn her jacket chased her in the street and beaten with sticks, then petitioners 2 to 5, 6 and 8 supra of this petition came to the rescue their mother and they were also beaten and injured by said Ramesh Reddy etc., he also tried to kill the 2nd petitioner-Neelavathi with knife and threatened them to compromise the case pending against Chakravarthy else to hound them. Upon which the 6th petitioner/A.7 Savithri presented report in II town police station who registered crime No.96 of 2007 for the offences punishable under Sections 448, 323, 324, 506 and 109 r/w 34 IPC.

In the background of the cases, the quash petition averments further are that Ramesh Reddy and his accomplice on 05.08.2007 in a drunken condition intruded into the house of the petitioners and assaulted the female foul at house No.5-501 and on the complaint given on phone No.108, the II Town police came and found him in the incident place and taken custody of Madhavan and two days later he was released on bail by booking a

petty case of found in drunkenness and he was let off by imposing fine. The accused got emboldened and claim that Neelakantan HC 1207 helped him in coming out of the criminal case by converting into petty case and threatened that a criminal case would be booked very soon against these accused persons and it is the present crime off shoot of the same. The petitioners filed said 2 conviction judgments and copy of the reports and the record of the petty case against Ramesh Reddy dated 05.08.2007 found at 7:30 PM in a drunken condition and the Government Hospital Chittoor issued the certificate of he was under drunken condition and it also shows another person Madhavan also in drunken condition and said Ramesh Reddy and Madhavan were booked in a petty case for the offence under the section 3 (XII) TN Act in petty case No.17 & 18 of 2007 of Chittoor II Town Police Station.

The grounds urged thereby are that the proceedings are liable to be quashed and it is a false case foisted by weaving a false story saying on 12.08.2007 all the members of the family of the petitioner as if attacked though they all had been to Kanipaakam village to attend obsequies of mother of Bhaskaramma and they returned to their residence after sunset. It is also the say that K.Pandu-A.8 was an employee in Primary Health Centre, Gangadhar Nellore which is far away from Chittoor Town and as per the certificate issued by the Medical Officer, Primary Health Centre, it shows he was on duty from 09.00 AM to 5 PM as per the duty daily any certificate is attendance. It is therefrom contending that no such incident happened and the accused were not there much less at their house and the proceedings are liable to be quashed. It is also averred that this case is foisted through

Ramesh Reddy by Chakravarthy to settle their scores by influencing the HC Neelakantan so that Chakravarthy could come out from criminal case along with his men and it is a vindictive proceedings without any iota of truth and police did not properly investigated the case and registered the case and filed final report. It is the further contention that the alleged sustaining of injuries are untrue if at all there might have been fight with another gang by Ramesh Reddy for his sustaining any injury by using the same in implicating the petitioners and the taking of him from his house by the constable alleged at about 01.30 PM and the occurrence thereafter at his admission with no lapse of time at 3.50 PM at the hospital which is more than 2 kms away to the alleged place of occurrence and the FIR reached the Court at 11.20 PM of same day, all indicating the scheme between Chakravarthy, Ramesh Reddy and Neelakantan in foisting the case and the proceedings are liable to be quashed.

The notice ordered to the 2nd respondent and the same is returned of no such addressee. This court treated the same as sufficient service and taken as heard said Ramesh Reddy, the defacto complainant and heard the learned counsel for the petitioners who reiterated the same in the course of hearing from the above and also the learned Public Prosecutor representing the same.

In the factual background there is no necessity of impleading Neelakantan HC since State is impleaded representing SHO as respondent No.1 is enough and thereby the petition to implead Neelakantan in Crl.M.P. not ordered so far can be dismissed, accordingly dismissed. Undisputedly as pointed by the learned

Public Prosecutor, Ramesh Reddy is not shown as accused in any case from the reports given by any of the accused persons along with Chakravarthy. The judgments filed shows Chakravarthy is one of the accused in 2 criminal cases ended in conviction, leave about other crimes pending undisputedly few days before the occurrence Ramesh Reddy was booked by police in a petty case while under intoxication and the quash petition averments in this regard show it is for the issue raised by the Ramesh Reddy by came to the house of the petitioners and created nuisance and attacked the inmates and they informed the police and police came belatedly and taken him and booked in a petty case to save him. It is also one of the motives stated by the petitioners in seeking to quash the police final report.

As referred supra at best but for against A.9 of offence under Section 448 IPC, if at all the version of the complainant is true for which also there is no witness other than himself, he was shown taken if at all on the motorcycle of him to the house of A.3 where other accused are residing and allegedly beaten there for which at best the offence under Section 323 IPC that attracts, leave about any offence under Section 506 IPC against said constable SS Babu.

In the background and from the fact that the certificate of the District Medical Officer showing A.8-K.Pandu since died no doubt was on duty between 10 AM to 5 PM on that day at Gangadhar Nellore, the alleged offence is stated between 1.30 PM to 3.50 PM at best as admitted in the hospital at 3.50 PM and recording the statement with no lapse of time, those are one of the circumstances brought about as engineered one with a false story of occurrence and the very occurrence is a doubtful much less by

participation of Pandu-A.8 if at all from the said certificate of he was on duty, sufficient to say even for the offence under Section 323 IPC there is a medical certificate the proceedings so far as against petitioners 1 to 8 are unsustainable, but for if at all against A.9-Babu for the offence under Section 448, 323 & 506 IPC.

Accordingly and in the result, the Criminal Petition is partly allowed. It is made clear that this observation of no grounds to quash the proceedings so far as against A.9 no way influence the mind of the trial Court either in the enquiry/trial including as to any requirement of sanction for the offence under Section 197 Cr.P.C. to decide during course of trial.

Consequently, miscellaneous petitions, if any shall stand closed.

Date: 25.10.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

