

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.8493 of 2017

ORDER :

The petitioners are A.1 and A.3 in C.C.No.77 of 2017 on the file of the Judicial Magistrate of First Class, Gooty, Anantapur district. The learned Magistrate has taken cognizance vide docket order dt. 22.02.2017 for the offence punishable u/ sec.324 r/ w 34 IPC against the petitioners on the protest petition vide CrI.M.P.No.2576 of 2015 in Cr.No.228 of 2013 filed by the 2nd respondent/ complainant.

Impugning said proceedings, the petitioners herein filed the present quash petition with the contentions in the grounds as well as submissions during the course of hearing that the order dt. 22.02.2017 taking the protest petition on the file of the Court as C.C.No.77 of 2017 outcome of non-application of mind and in ignoring the basic requirements of considering whether the report/ complaint discloses name and with what allegations even remotely of any connection to the offences alleged to make the person as accused and thereby the cognizance order is unsustainable particularly against the 3rd Petitioner-Vijayanath Gupta who is since no way connected to the allegations in the protest petition even apart from not even referred in any manner in the FIR in Cr.No.228 of 2013. The learned Magistrate failed to appreciate the different versions made of the petitioners have attacked him and caused injuries in the protest as against the earlier version in the FIR in 228 of 2013 of three unknown persons

beat him and caused injuries which is devoid of merits. Hence, sought to quash the proceedings in the Calander Case supra.

Also heard the learned counsel for the 2nd respondent who supports the cognizance order and also heard the learned Public Prosecutor for the 1st respondent-State and perused the material on record.

The averments of the protest petition of the quash petition 2nd respondent-complainant are that the above crime was registered by the Station House Officer, Gooty Police Station, basing on the alleged statement of the complainant. On 04.07.2013 along with his son and nephew, the complainant went to Penukonda Court to attend in the cases pending in relation to disputes with 1) Prasad Guptha and 2) Raghunath Guptha and after attending all of them came to Anantapur where his son and nephew stayed and the complainant further came back to Gooty to go to Karidikonda village on his motor cycle. At that time, some unknown persons three in number followed him and at about 11.45P.M., when he reached Kancham Bhavi area on Gooty-Karidikonda road, they stopped him and attached with sticks and caused bleeding injury on his head, nose and knee. After he fell down, they ran away. After that he slowly and steadily, reached Venkateswara Dhaba where on the information given by the owner of Dhaba-Madhu to the complainant's relatives, they came and shifted him through 108 ambulance to Gooty Government hospital. It appears that a case in Cr.No.228 of 2013 was registered by Gooty

Police Station basing on the alleged statement of the complainant. It is further submitted that he has not heard anything from Gooty police from the date of incident i.e. 04.07.2013 till September, 2015. In the month of September, 2015, the complainant received referred notice from Gooty Police Station and on perusal of the records in the Court, it came to light that Gooty police have registered case in Cr.No.228 of 2013 against some unknown offenders and finally concluded that the injuries suffered by him were due to fall from motor cycle. It is submitted that the complainant specifically stated to the police that three persons were coming behind him in two motor cycles from Gooty and as he did not expect anything unusual, he did not identify who they were and hence he mentioned that as unknown offenders. When the complainant was going near Kancham Bhavi area near junction of Gooty road with National Highway, the offenders overtook him and attacked him with rods. As the offenders came near the complainant, he identified them as the quash petitioners. Due to his cries and coming of a vehicle in opposite direction, the quash petitioners ran away. After that at Dhaba, Madhu, the owner of the Dhaba, informed him that the quash petitioners enquired with him about the complainant prior to the incident and also had dinner in the Dhaba. He further submitted that the contents of the statements filed by the Police are not reflecting true version of the incident. On the next day morning after the incident, one Head Constable of Gooty Police Station came to the hospital and enquired with him about the incident, noted down and took

signature of him in it, without read over to him. Except the Head Constable at Hospital, no other examined him to record his statement. After receipt of referred notice, on his enquiry with his son, nephew and Madhu, he knew that the police did not examine any other person except himself and not visit the scene of offence. They have prepared the statements of the witnesses without examining any of them. If the version of Investigating Officer that the complainant fell down from motor cycle, there must have been damage to the motorcycle. Even as per the referred chargesheet contents the duty Medical Officer has not ruled out assault by using hard object. The complainant suspects that the Investigating Officer has imagined sequence of events and therefrom could not come to just conclusion. Moreover, the complainant was in a state of shock when police visited him. The complainant further submits that the he has not received any information regarding investigation done in the above case by the police. The complainant understands that the police were influenced by the quash petitioners to refer the case. Without examining any of the witnesses, the police who were siding with the accused party, have sent a notice to the complainant that the complaint preferred by him is referred. Hence, the protest petition.

The contents of the sworn statement of the complainant are that on 04.07.2013 at 6.00 A.M., himself, his son-in-law and his son left for Court at Penukonda and attended the Court and returned to Gooty and on the way, his son-in-law and his son dropped at Anantapur from where he proceeded to Gooty and then left to his

village Karedikonda at 11.45P.M., on motor cycle and three unknown persons followed his motor cycle and when he reached Kancham bavi, they stopped his motor cycle and attacked him with sticks and caused injury to his head, nose and knee, and he fell down and they ran away from there. Then he reached to Venkateshwara Dhaba and Madhu, the owner of the Dhaba informed to his relatives on phone who came and shifted him to Government Hospital, Gooty through 108 ambulance.

It is the settled law that a protest petition is not independent first time private complaint but must contain in protest the details as to how the investigation was done by the police to raise protest against it is faulty and in what respects and in relation to what witnesses, if at all any facts of their statements not contained any truth of saying as if what they did not state is shown stated or any material witnesses not even examined to differ with that investigation material not showing any accusation from the protest to take cognizance by examination of the protest petitioner or any witnesses raised protest. Thus even from that protest petition allegations and supporting sworn statement versions having any deviation to the original investigation material for a case to make out, the learned Magistrate has to consider not only the allegations in the protest petition with the sworn statement in support of it but also the investigation material in entirety. Here, the impugned order of the learned Magistrate no way shows compliance with such requirements from the protest petition and the sworn statement and passing of the cognizance

order with reference to any such material of the investigation also. Coming to the facts for more detail, the very First Information Report setting law in motion of Cr.No.228 of 2013, dt.05.07.2013 of Gooty Police Station of Anantapur District registered for the offence u/sec.324 r/w 34IPC from the information received at 4.00A.M. from the alleged occurrence took place at Kanchambavi village on the date of incident i.e. on 04.07.2013 at about 6.00P.M., concerned, the statement of the defecto-complainant N.Suryachandrudu recorded by the Investigating Officer, Gooty, reads that he is living by cultivation, One G.Prasada Gupta, G.Paghnatha Gupta along with one G.Prasada Gupta's brother's son, there is a Court litigation pending in Penukonda Court and to attend on that day at about 6.00 A.M., he along with his son-in-law and son started and attended the Court and after adjournment of the case, when started to return back came to Anantapur where his son and son-in-law got down, he started to proceed to Gooty on his motor cycle and when reached Gooty, 3 unknown persons who followed the motor cycle at about 11.45A.M. at Kanchembhavi stopped his motor cycle and beat him with sticks from which he sustained head injury and blood oozed from his nose and he also sustained injury to his knee region and when he fell down from the attack by them supra, the assailants fled away, he by securing strength got up having fallen to ground in their attack and reached to Venkateshwara Dhaba slowly and telephoned to his relatives by one Madhu and they came in 108 ambulance and shifted to Govt. Hospital where his statement was recorded by police and he

suspects said G.Prasada Gupta, G.Paghnatha Gupta along with one G.Prasada Gupta's brother's son of Penukonda by engaging unknown three persons attacked him.

No doubt, the First Information Report clearly shows, it is at the instigation of the three persons quash petitioners G.Prasada Gupta, G.Paghnatha Gupta along with one G.Prasada Gupta's brother's son by name G.Vijayanarayana Gupta. Here, the 3rd quash petitioner-A.3 is shown as G.Vijayanarayana Gupta own brother of the petitioners / A.1 and A.2 and not brother's son of G.Prasada Gupta-A.1. Thus, the A.3 name is not there from the very detailed report supra. The police from the investigation filed final report in Cr.No.228 of 2013 supra, that final report shows during investigation, the investigating officer examined the defacto-complainant and six more witnesses and prepared a rough sketch of the alleged scene of offence and the investigation disclosed that there is a civil dispute regarding the share of the property between the defector-complainant and the A.1 among others. Further there is kidnap case vide Cr.No.71 of 2013 registered against the defecto-complainant herein as A.1 and his son Sudhakar Rao and son-in-law N.Somasekhar as A.2 and A.3. it is for the offences punishable u/ sec.342,365, 368,384 and 506 r/w 34IPC of Penukonda P.S. for kidnapping the A.1 herein G.Prasad Gupta on 21.06.2013 at about 11.30 p.m. then said G.Prasad Gupta-A.1 herein left his house in the morning in a car to Bellary on his business to see Vasthu and on the same day, the L.W.2 received a phone call from L.W.1 and A.1 to A.3 forcibly abducted

him by demanding him to give his share of 5% in Balaji minerals to A.1 Surya Chandrudu/ defacto-complainant herein, and kept him somewhere and at that time, the accused switched off the cell phone of the victim. When L.W.1-Prasad Gupta tried to contact to the mobile phone of L.W.1, his phone was found switched off thereby there is no further contact. That crime from the investigation of by citing 18 witnesses in all including investigating officer chargesheet in January, 2014 is filed and the same was taken cognizance by the learned Magistrate, Penukonda against the said N.Surya Chandrudu and his son N.Sudhakar Rao supra. The present complaint of Cr.No.228 of 2013 was subsequent to the registration of the crime No.71 of 2013 of Penukonda P.S dt.21.06.2013, since the very report was dated 05.07.2013 in the present crime No.228 of 2013. The police final report in the Cr.No.228 of 2013 also refers the same. So far as the alleged injury to the defacto-complainant, the medical report shows two simple injuries one laceration on the left side of the nose and one laceration on right forehead. It is thus between the defacto-complainant and the accused herein, the defacto-complainant gave a false statement before police as if the accused engaged three persons and beat him with sticks and they beat him and caused injuries with no truth from the investigation in filing referred report for not as a mistake of fact even. The very report in registration of the Cr.No.228 of 2013, the three unknown persons allegedly beat with sticks and caused injuries to him and he is suspecting the petitioners herein are responsible for that. Even

from the statements of any of the witnesses but for the existence of civil disputes to have suspicion there is no basis. Even from the protest application against the investigation what the defecto-complainant stated is the self-same in page 1 and 2 that he specifically stated to the police that three persons coming behind him in three motor cycles in Gooty and he expected something unusual but he did not notice who were they and he mentioned thereby in the First Information Report as unknown persons when he was going near Kancham bavi area junction of Gooty road on National Highway, the offenders overtook him and attacked with sticks. As the offenders came near to him, he identified as the petitioners herein and unable to withstand the assault he raised cries of the vehicle was already coming in the opposite direction towards Gooty. Hence the offenders ran away. He went to Sri Venkateshwra Dhaba and on observing the injuries one Madhu of the Dhaba to him he narrated the incident that three persons of Penukonda attacked him etc., facts.

This protest petition and sworn statement version of the complainant dt.11.08.2016 and statement of Y.Madhusudhan, dt.07.11.2016 in R.C.S.No.2 of 2015 are with improvements contra to the very First Information Report version and the earlier police investigation material of other witnesses. The First Information Report is very clear that the three unknown persons attacked him and later it is stated that the complainant is suspecting the attack was done by the unknown persons at the instance of A.1, A.2 and son of A.1's brother but in the protest petition and sworn

statements, it is not even mentioned the son of A.1's brother, but A.1 to A.3. Whereas, he developed the version all of a sudden in the protest petition as if he was attacked by A.1 to A.3. The said contradictory version was simply relied by the learned Magistrate as if it is a first time private complaint in taking cognizance by totally giving a go by to the First Information Report contents even of Cr.No.228 of 2013 which is first version in the hospital where he was undergoing treatment recorded by police and his statement during investigation also self-same with no improvement all through. He could not have taken cognizance for the developed contradictory version as the criminal law cannot be allowed to use as a weapon to wreck vengeance.

Having regard to the above, from the cognizance order in totally ignoring the earlier crime and investigation material without referring to it even from a totally different contradictory version with which the complainant came up on protest is unsustainable and liable to be quashed.

Accordingly and in the result, the Criminal Petition is allowed by setting aside the orders passed in CrI.M.P.No.2576 of 2015 dt.22.02.2017 and quashing the proceedings in C.C.No.77 of 2017 on the file of the Judicial Magistrate of First Class, Gooty, Anantapur district against the petitioners/ A.1 to A.3 and they are acquitted. Their bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:01.11.2017
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