

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4408 of 2010

ORDER :

The petitioners are A.2 and A.5 viz: A.1 is father of the A.2 and A.5 and husband of A.4 and A.3 is the close associate of A.1. It is a private complaint of 2nd respondent herein, filed for the offences punishable u/ sec.447, 354, 323 and 506(2) r/w 34 IPC, on the file of the learned Judl.Magistrate of First Class, Palakol, West Godavari District, and same was when forwarded to police for investigation, the SHO, Achanta Police Station, having regard to Cr.No.16 of 1999 after investigation filed final referred report as the crime is false. It was on protest by private complaint for the offences supra, the learned Magistrate as per Sections 200 and 204 & 190CrPC, has taken cognizance for the offences supra and committed the case in P.R.C.No.17 of 1999 to the Court of Sessions, West Godavari Division by splitting up the case against the petitioners/ A.2 and A.5 as another P.R.C.No.30 of 2007. In the meantime, the A.1,A.3 and A.4 who were put to trial in S.C.No.108 of 2008 were acquitted by the learned Asst. Sessions Judge, Narsapuram vide judgment dot.25.10.2008. The quash petition herein filed by A.2 and A.5 is to quash the proceedings pending in PRC No.30 of 2007.

From the background supra, coming to the averments in the original private complaint and protest petition that the complainant owned Ac.0.30 cents of dry land in R.S.No.1368/ 2 of Achanta village and has been in possession and enjoyment of said land, that due to some disputes arose between the complainant's

and A.1's family, all the accused who were waiting for opportunity to take revenge against the complainant, on 25.01.1999 at about 5.00 P.M. while she was working in her field supra, trespassed into her land and abused her in filthy language and A.1 to A.3 pulled her from her land by touching her breast with a view to outrage her modesty and when she tried to get rid of their clutches, the A.1 to A.3 removed her saree and beat her indiscriminately and also threatened her to kill if she again enters into her field and as a result, she suffered from physical pain and mental agony. The above incident was allegedly witnessed by L.W.1- Pudi Appa Rao, L.W.2-Borra Pullaiah, L.W.3-Doggu Esukumar and L.W.4-Chilukuri Satyanarayana. Immediately after the incident, she allegedly lodged a complaint to police but no action was taken by the police by saying reasons that there is no police officials like Sub Inspector or Asst.Sub Inspector are available and they are not competent to receive the report, which made her to file the private complaint. It is the self-same version on protest, against referred report, that was taken cognizance.

The learned Sessions Judge, Narsapuram, after trial in S.C.No.108 of 2008 against A.1,A.3 and A.4 held that there is no consistency in the evidence of the prosecution witnesses i.e. P.Ws.1 to 3, who are all relatives to P.W.1 and there is no independent witnesses cited to corroborate with the testimony of complainant-P.W.1. Further the P.W.2-Pudi Apparao, categorically admitted in his cross-examination about his conviction in C.C.No.43 of 1999 filed by the A.1 herein and completely resiled from his earlier statement(Ex.P.1). There is a lot of inconsistency even in

the evidence of P.W.1 between the facts narrated in her complaint and testimony before the Court. Thus, the evidence of P.Ws. 1 to 4 is no way establishes the guilt of the accused 1,3 and 4 and acquitted them.

The contentions in the grounds of quash petition of the petitioners/ A.2 and A.5 are that the complainant with a malafide intention to grab their property having no right at all over the property, filed a false complaint against them which even referred as false, filed protest and same without considering earlier investigation material, on sworn statements taken cognizance and on committal of the case as P.R.C.17 of 1999 and due to their absence to the Court, the case is split up against them and against the other accused i.e. A.1, A.3 and A.4 committed to the Court of Sessions where the learned Sessions Case vide S.C.No.108 of 2008 after elaborate trial and considering the evidence on record for all the charges held and A.5 held that there is no iota of evidence on record against the A.1,A.3 and A.4 and acquitted them. The allegations and also the evidence against all the accused including the petitioners/ A.2 and A.5 are one and the same and there are no specific overt acts against these petitioners is concerned. Even if the case is committed to the Sessions Court and the trial is allowed to be continued, no purpose will be served since the Sessions Case supra was already ended in acquittal against A.1,A.3 and A.4 and hence to quash the PRC No.30 of 2007.

A perusal of the Judgment of the learned Sessions Judge, including from the material on record, shows that the witness P.W.2 Pudi Apparao, husband of complainant's sister and on whose

advice, a complaint was lodged by the complainant, though in chief examination corroborated in some aspects of the case with the P.W.1, but resiled during his cross-examination contrary to his earlier investigation statement(Ex.P.1) and there is no any worth evidence proving the guilt of any of the accused from the witnesses i.e. P.Ws. 1 to 4 in acquitting the A.1,A.3 and A.4 by the learned Sessions Judge. In view of the case against the A.1,A.3 and A.4 ended in acquittal on self-same evidence and from the self-same material, there is no purpose to put the A.2 and A.5 to trial by committing the case to the Court of Sessions. Same is also substantiated by the Division Bench expression of the Punjab & Haryana High Court in Sudo Mandal @Diwarak Mandal Vs. State of Punjab¹ the single Judge expression of this Court in Azghar Ahmed Khan Vs. State of Andhra Pradesh² and also the Single Judge expression of the Delhi High Court in Urmila Devi Vs. State (Govt. Of NCT of Delhi)³.

Having regard to the above, the Criminal Petition is allowed by quashing the proceeding against the petitioners/ A.2 and A.5 in P.R.C.No.30 of 2017 on the file of the learned Judl.Magistrate of First Class, Palakol, West Godavari district, and they are acquitted and their bail bonds stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:25.10.2017
vvr

¹ (2011) 2 RCR(CrI) 453

² (2002) 2 ALD(CrI)951

³ (2007) 137 DLT 265