

* SMT JUSTICE T. RAJANI

+ CRLP.No.3797 of 2011

% Dated: 26.12.2017

A. Janga Reddy and others.

... PETITIONERS

AND

\$ A. Indira Reddy and another.

... RESPONDENTS

! Counsel for Petitioners : MR. C. SHARAN REDDY

^ Counsel for Respondent : MR. UNNAM MURALIDHAR RAO
PUBLIC PROSECUTOR

< GIST :

> HEAD NOTE:

? Cases referred:

AIR 1992 SC 604



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA
PRADESH

* * *

CRIMINAL PETITION No.3797 of 2011

Between:

A. Janga Reddy and others.

...Petitioner

and

A. Indira Reddy and another.

... Respondents

Date of Judgment pronounced on : 26.12.2017

SMT JUSTICE T. RAJANI

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.3797 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioners in PRC No.40 of 2010 on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar. The offences alleged are under Sections 307, 442, 448, 452 and 506 the Indian Penal Code, 1860.

2. Heard the counsel for the petitioners; the counsel for the 1st respondent; and the learned Public prosecutor appearing for the 2nd respondent.

3. The averments of the complaint can be looked into, in the foremost, to see whether the facts mentioned therein would attract the alleged offences.

The prosecution was set into motion by the complainant by way of a private complaint filed on 28.01.2008. The reason for filing the private complaint, as mentioned in the complaint, is that the report given to the Station House Officer, did not see the light of the day and no action was taken on the same, the police having been influenced.

4. The facts stated in the private complaint filed by the complainant are that on 10.01.2008, at early hours, all the accused suddenly barged on the main door, hitting the door with Rods and Sticks and created a huge galata, hurling abusive language. Thereby, the complainant and his family members

woke up in shock, thinking that some dacoits attacked his house. Since they were armed with weapons and continuously bagging on the main door, the complainant and his family members, fearing for lives, did not open the door. The accused were threatening the complainant and his family members to come out of the house, as they want to shoot him with a gun. Thus, the accused deliberately committed offence of criminal trespass and also attempted to kill the complainant. Due to the galata and the criminal trespass, the neighbouring flat owners came out and asked them as to who are they and why they are creating such sort of criminal act. The accused also criminally intimidated them with dire consequences and directed them to go inside. At the same time, the accused in drunken state, caught hold of the two watchmen and took out a revolver and threatened to kill. In the next morning also some of them once again visited the complainant's flat, in a car. Thereby, the complainant gave a complaint to the police, which was not acted upon. Hence, this private complaint, seeking for prosecution of the accused for the offences under Sections 307, 442, 448, 452, and 506 IPC.

5. The aforesaid complaint was referred to the police and a final report was filed, stating that there was lack of evidence. On that, a protest petition was filed by the complainant with almost the same averments, as were made in the complaint and the same was referred to the police and a case was registered in Crime No.92 of 2008 and thereafter the proceedings went up to

the case being numbered as PRC No.40 of 2010 on the file of the III Metropolitan Magistrate, Cyberabad.

6. The counsel for the petitioners seek for quash of the proceedings, on the ground that the allegations made in the protest petition or in the complaint do not attract the offences under Sections 307, 442, and 448 IPC as, according to the averments, the accused did not enter into the house of the complainant and they were only standing at the main road and banging the door and they did not commit any act, which would take them within the purview of Section 307, 442, and 448 IPC.

7. The counsel for the first respondent very much persuades this Court to look at the nature of the offence and the outrageous behaviour of the accused that is reflected by the allegations, in order to permit the prosecution to go on, in respect of the offences under Sections 307, 442, and 448 IPC.

8. The agony of the first respondent can be perceived by the agonised submissions made by his counsel. But whatever be the concern of the first respondent, unless the allegations in the complaint attract the offences alleged against the petitioners, the prosecution cannot be permitted. The parameters for quashing the proceedings are well settled.

9. In *State of Haryana and ors., vs. Ch.Bhajanlal and others*¹, it was held that in the exercise of the extra-ordinary power under Article 226 of the Constitution of India or the

¹ AIR 1992 SC 604

inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised;

- a) Where the allegations made in the First Information Report or the complaint, 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;
- b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- d) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the Code;
- e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

g) Where a criminal proceeding is manifestly attended with *mala fide* 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.

10. Now it is pertinent to look into the complaint and the protest petition to see whether the allegations, on the face of it, would entitle the petitioners for quash of the proceedings. Section 307 IPC prescribes punishment for an attempt to commit murder. The provision starts with saying, 'whoever does any act'. Hence, it goes without saying that there should be an act done by the accused, which shall make them guilty of the offence under Section 307 IPC. The counsel for the first respondent contends that if the respondents had opened the doors, the petitioners would have entered the house and committed the murder. But the fact remains that they did not open the door and the acts of the accused stopped short of performing any act, which would fall within the purview of Section 307 IPC. The illustrations given to Section 307 IPC would make it clear, that unless the accused goes ahead with doing any act, which would have caused the death of the victim, which would make him guilty of murder, he cannot be said to have committed the offence under Section 307 IPC. Illustrations (c) and (d) are relevant to the facts of this case.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to be punishment provided by the latter part of (the first paragraph of) this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. Then the offence stands committed.

11. In this case, it appears from the complaint, that the petitioners were armed with deadly weapons but they did not use those weapons against the complainant. Perhaps they wanted to use those weapons if they had an opportunity, but such opportunity, having not been rendered by the complainant due to his non-opening of the doors, did not take the acts of the accused beyond their banging the doors and hence, it cannot be said that they committed any act which would fall under Section 307 IPC. Mere preparation for the offence would not suffice to attract Section 307 IPC.

12. From the above illustrations, it is clear that unless there is some overtact on the part of the accused, to forward his intention to commit murder of the complainant, Section 307 IPC does not get attracted. Many rulings rendered in respect of Section 307 IPC would support the above reasoning. (See: *Kumar v. State* [1981 Cri.L.J.1787]; *Rekha Mondal v. State* [1968 SCD 208] and *Sagatan v. State* [(2000) 4 SCC 454].

13. In all the above rulings, it was observed that there should be intent coupled with some overtact, in execution thereof. The petitioners did not go ahead with committing any act in execution of their intention. The contention of the counsel for the 1st respondent that the accused have committed such offence

against the watchman and other occupants of the apartments, also is not found merited. The statement of one of the apartment residents was recorded by the court below. It only shows that the accused threatened him and the watchman, may be at the point of gun, that they would kill them. But it can be clearly gathered from the said evidence that the intention of the accused was not to kill PW2 or the watchman but they only wanted to terrorise them to see that they do not come in the way of their proceeding to the house of the complainant. Hence, the prosecution for the offence under Section 307 IPC cannot be sustained.

14. So far as the offences under Sections 442, 448 and 452 IPC are concerned, the counsel for the 1st respondent contends that the acts of the accused amount to trespass as the complainant is a resident of one of the apartments in the complex, into which the accused entered. His argument has some weight, as the apartment in which the complainant is living amounts to being under his occupation, as common enjoyment is provided over the common areas, for all the occupants of the apartments. Hence, the charges so far as Sections 442, 448 and 452 IPC are concerned, can be permitted to be proceeded with.

15. So also, Section 506 IPC, wherein there were threats that were made against both the complainant, PW2 and the watchman. The allegations in the complaint would satisfy the requirements of Section 503, 'Criminal Intimidation', which is punishable under Section 506 IPC.

16. With the above observations, the Criminal Petition is partly allowed quashing the proceedings in PRC No.40 of 2010 on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar, against the petitioners so far as the offence under Section 307 IPC and the proceedings so far as the offences under Sections 442, 448, 452 and 506 IPC are concerned, shall go on. Interim stay, granted by this court in CrI.P.M.P.No.4054 of 2011, dated 03.08.2011, shall stand vacated.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 26, 2017
LMV



T. RAJANI, J