

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.8197 OF 2011

ORDER

This criminal petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.2292 of 2009 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad.

The brief facts of the case are that, on 27.06.2009, the 2nd respondent-*de facto* complainant lodged a complaint against the accused. Basing on the same, the police registered a case in Crime No.207 of 2009 under Sections 448, 323 and 506 read with Section 34 IPC, investigated and filed the charge sheet against the accused.

Heard learned counsel for the petitioners, learned counsel for the 2nd respondent and learned Public Prosecutor.

Learned counsel for the petitioners submits that the complaint lodged by the 2nd respondent does not disclose the ingredients of Sections 448, 323 and 506 IPC. The complaint was lodged due to civil disputes between the parties. The complaint does not show that the accused have trespassed into the house of the *de facto* complainant. Therefore, the ingredients of Section 448 of IPC are not present in this case.

Per contra, learned counsel for 2nd respondent submitted that on 27.06.2009, A1 and A2 destroyed the bathroom wall of the 2nd respondent-*de facto* complainant and when the 2nd respondent objected, the accused

trespassed into his house and threatened him with dire consequences. Learned counsel submitted that the ingredients of Section 448 IPC are present in the complaint in view of the fact that the accused have trespassed into the house of the *de facto* complainant and damaged the wall.

Learned counsel for the petitioners submits that the police registered the case only for the offence under Section 448 IPC against the accused and no case is registered for demolition of property under Section 427 IPC.

As far as this contention is concerned, it is obvious from the complaint dated 27.06.2009 that there is a dispute with regard to the destruction of bathroom wall of the *de facto* complainant.

Learned counsel for the petitioner further submits that the offence under Section 506 IPC is a non-cognizable offence. The police have to obtain permission from the Magistrate concerned to prosecute the accused for the said offence. Learned counsel placed reliance on ***State of Haryana and others v. Bhajanlal and others***¹ and ***Juvvadi Raghu and others v. State and another***² and contended that the offence under Section 506 IPC is a non-cognizable offence. As per Section 155 Cr.P.C., if information regarding non-cognizable offences is given to an officer of a in-charge police station, he has to enter the substance of that information in a book to be kept in the form prescribed by the State

¹ 1992 Supp(1) SCC 335

² 2006(2) ALD (CrL) 634 (AP)

Government and refer the informant to the Magistrate. It is submitted that there is no material on record to show that the police have followed the said procedure and obtained permission from the Magistrate to investigate the case and therefore, registering the case under Section 506 IPC is liable to be quashed.

On consideration of the contentions of both the counsel, it can safely be concluded that there are civil disputes between the parties with regard to property. There are allegations with regard to trespass and criminal intimidation which are cognizable and non-cognizable offences.

A perusal of the contents of charge sheet reveals that, as per contents of panchanama of scene of offence, there was damage to the bathroom wall, resulted in dispute with the accused person. The *de facto* complainant-L.W.1 was sent to Gandhi Hospital, Secunderabad and was treated as out patient vide MLC No.20573 and the medical officer L.W.4 issued medical certificate stating that the injury sustained by L.W.1 was simple in nature. Therefore, the police filed charge sheet against the accused for the offences punishable under Sections 448, 323, 506 read with 34 IPC. In the light of the contents of charge sheet, there are no grounds to quash the proceedings in this case.

However, in view of the fact that this Court dispensed the presence of accused before trial Court during pendency of the petition, the accused have not been arrested so far, they

can attend to the Court below and may file a petition, on that the presence of the accused may be dispensed with during the trial of the case.

With the above observation, the Criminal Petition is disposed of.

The Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 11.10.2017
ssp

