

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.873 of 2016

ORDER :

The petitioner is the accused and no other than the husband of the complainant in C.C.No.442 of 2014 on the file of the IV Addl. Judl. Magistrate of First Class, Warangal, taken cognizance for the offences punishable u/ sec.506 and 507 IPC on the complaint of 2nd respondent.

The grounds in the quash petition are that the defacto-complainant filed a false case against him without any basis and only to wreck vengeance and to extract money from him. In the crime supra after investigation, the police filed charge sheet which does not at all show ingredients of Sections of 506 and 507 IPC and on the face of the complaint, it is a false and vexatious one. The allegation in the complaint is that the petitioner threatened the defacto-complainant to kill when they were living together in the matrimonial home at America and also subsequently over phone when she left the matrimonial house and residing at Warangal with her parents. The cause of action was shown as the petitioner has called over phone on 01.01.2014 at 11.40 am and also at 11.50am and threatened to kill. The police examined six witnesses and none of them could substantiate anything independent and all are hearsay only. In the charge sheet the police have written which is not said or told by any of the witnesses. The defacto-complainant earlier filed another case against the petitioner herein for the offences u/ sec.498-A, 301,406 and 505 of IPC and Sections 3 & 4 of

the Dowry Prohibition Act, vide FIR No.46/ 2012 not satisfied with that causes harassment to him, she filed the present false case without any material.

It is also the contention that she filed another case vide OP No.246 of 2012 on the file of Family Judge-cum-III Additional District Judge at Warangal for restitution of Conjugal rights and the same is pending. The petitioner herein also filed counter in said OP agreeing for the decree and prayed for early directions for restitution of conjugal rights, but she did not come forward which itself proves that only to harass him, she filed the cases. It is also contended that the defacto-complainant is holding their son and preventing his natural love and affection on the son and the defacto-complainant is mainly interested in extracting money from him and the present case is nothing but abuse of process of law. It is also contended that the alleged offence took place at America, and thus there is absolutely no jurisdiction in India whatsoever, to try the case and placed reliance on the expression of the Apex Court in Y.Abraham Vs.Inspector of Police¹ wherein quashed the proceedings for want of jurisdiction, and the present case is also liable for quashment for lack of material to show that the petitioners have committed any offence, much less under the provisions of 506 and 507 of IPC and in India.

Heard the learned counsel for the petitioner who reiterated the contentions of the quash petition and the learned counsel for the 2nd respondent who sought for dismissal of the quash petition

¹ (2004) 8 SCC 100

by supporting the cognizance order and also heard the learned Public Prosecutor for the 1st respondent-State. Perused the material on record.

The case of the defacto-complainant through her statement shows that her marriage with the petitioner herein was performed on 17.11.2005 and after marriage they lived happily for few days at Bangalore and then they went to America and lived there where the petitioner harassed her mentally and physically by asking her to bring additional dowry and also threatened her else he will kill her parents. When she informed the same to her parents, they convinced her saying that those things are common in marital life and she needs to adjust. When they came to India also she stated to her parents about the harassment but again they convinced her and said to adjust. She begot a male child in the year 2007, and still there is no difference in the attitude of her husband and hence, she returned to India and lodged the complaint against the petitioner and his family members with the CID Head Office, Hyderabad and since then the petitioner kept on harassing her by threatening her that as he will kill her, if she does not withdraw the case. Likewise, on 01.01.2014 the petitioner called from his mobile No.303 704 7191 to his mobile 91995183885 at 11.40 in the morning and threatened and again called at 11.50 and started threatening and he also threatened her father.

Even from her statement during investigation she reported to the C.I.D. police against her husband and family members on 08.06.2012 and her husband is threatening to withdraw the case,

else to kill her and threatening over phone like so on 01.01.2014 from the cell phone of her husband bearing No.3037047191, she received phone call at about 11.40A.M. to her phone bearing No.919951838865 and again at about 11.50 A.M. when he was threatening her, her father's friend Laxmanamurthy, and her friend Shailaja who were there heard the threats on phone, to do away with her and her family members. Said Laxmanamurthy was examined as L.W.5 and stated that he overheard the phone conversation in January,2014 when her husband was threatening her and her parents to do away with them and even while he was staying at Warangal, the A.1 was threatening her and her parents. Coming to the Statement of Shailaja she also stated the same. It is therefrom though the submission of the learned counsel for the defacto-complainant that once it is established from the statements of the witnesses prima facie accusation of the phone call received within the jurisdiction of the Court and the police station in registering crime, the contention of the lack of jurisdiction for that offence is unsustainable.

Section 507 IPC no doubt deals with criminal intimidation by an anonymous communication that "*Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes.*" Here it is not such a case for not an anonymous communication but directly by his communication to her if at all over phone thereby Section 507 IPC has no application to the facts. Coming to Section 506IPC which is

a punishment for criminal intimidation defined in Section 503IPC.

Section 503IPC says “*Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation*”.

From the statements of Laxmana Swamy and Shailaja respectively, there is nothing to show that she was in panic out of fear from the alleged intimidation or there was any alarm in her mind from the so called alleged threats to attract the offence u/ sec.506IPC even in the absence of showing alarm in the mind of the victim from the so called threats intended by the accused in her limb, the question of attracting the penal consequences does not arise.

Apart from it, both the offences u/ sec.506 and 507 are non-cognizable. Thus, the registration of the crime without permission of the learned Magistrate for the non cognizable offence as contemplated by Section 155CrPC and the investigation and filing of final report and taking cognizance for the same by the learned Magistrate are thereby unsustainable for nothing from the reading of the chargesheet or the First Information Report of permission of the learned Magistrate is obtained before registering of the crime covered by the non-cognizable offence.

In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.442 of 2014 on the file of the IV Addl. Judl. Magistrate of First Class, Warangal, against the accused and he is acquitted and his bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Date:01.11.2017
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Dr. B.SIVA SANKARA RAO J,

