

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1843 OF 2017

ORDER:

This petition, under Section 438 of Cr.P.C., is filed by the petitioner/sole accused-Settupalli Sambaiah @Sambasiva Rao in Crime No.42 of 2017 of Arundalpet Police Station, Guntur Urban, registered for the offences punishable under Sections 457 and 380 of I.P.C to direct the Station House Officer, Arundalpet Police Station, to release the petitioner in the event of his arrest in connection with the above crime, apprehending his arrest.

2. The case of the prosecution in brief is that:

On 31.01.2017 one Rachakonda Sushma lodged a report with Station House Officer, Arundalpet Police Station alleging that the petitioner-accused is residing in the ground floor portion, whereas she is residing in the third floor portion in the same building bearing Door No.4/16/421 situated in first lane of Srinagar, Guntur, and on 20.01.2017, she locked the house and went to her relatives house at Kolakaluru Village. On 31.01.2017, she received information from her neighbour that on previous day night somebody has taken household articles from her house. Immediately she rushed to her house and found that the lock of the house was broken and the Fridge, TV, gold chain, certificates and cash were stolen. She suspected that the petitioner might have committed theft and she lodged a complaint against the petitioner and one Sattupalli Kameswari.

3. The present petition is filed for grant of anticipatory bail on the ground that there were civil disputes with regard to right over the property and criminal litigation is also pending between the parties. The petitioner lodged a complaint against the *de facto* complainant – Sushma and others for the offences punishable under Sections 452, 354, 323 and 506 read with 34 of I.P.C and the same was referred to the police for investigation by exercising power under Section 156(3) of Cr.P.C. On receipt of reference under Section 156(3) of Cr.P.C., the Station House Officer, Arundalpet Police Station, registered as case in Crime No.133 of 2016. The brother of the *de facto* complainant by name R.Narendra was arrested and remanded to judicial custody and later he was released on bail. Notices under Section 41-A of Cr.P.C. were issued to *de facto* complainant and her mother and they approached this Court in Criminal Petition No.16015 of 2016 to quash the F.I.R. and the same was dismissed by this Court by an order dated 16.11.2016.

4. It is further contended that the petitioner also lodged another complaint dated 18.11.2016 against the *de facto* complainant-Sushma and others for the offences punishable under Sections 454(2), 392, 323 and 506 read with 34 of I.P.C. before the V Additional Junior Civil Judge, Guntur, and the same was referred to police for investigation by exercising power under Section 156(3) of Cr.P.C. and on the strength of such reference, the police registered a case in Crime No.13 of 2017 and the accused therein filed Criminal Petition No.1572 of 2017 to quash the proceedings in Crime No.13 of 2017 and the same is pending before this Court.

5. It is specifically contended that the *de facto* complainant-Sushma lodged the present complaint as a counter blast to the earlier complaint dated 18.11.2016 against this petitioner and the petitioner did commit no offence and there is no *prima facie* evidence to conclude that the petitioner committed such offences punishable under Sections 457 and 380 of I.P.C. and prayed to enlarge the petitioner on bail.

6. During hearing, Sri V.V.L.N.Sarma, the learned counsel for the petitioner, produced a copy of the private complaint in C.F.R.No.2718 of 2016 filed by the wife of the petitioner and crime registered against her on reference against the *de facto* complainant and others on reference in Crime No.133 of 2016. So also, the order passed by this Court in Criminal Petition No.16015 of 2016, dated 16.11.2016 and remand report in Crime No.133 of 2016 remanding Narendra, one of the accused in the above crime, to establish that the present complaint was filed as a counter blast pending criminal proceedings. It is mainly contended that civil suit is also pending regarding right over the immovable property based on the will and on account of such dispute, the present case is foisted, and therefore, prayed to enlarge the petitioner on pre-arrest bail.

7. The learned Public Prosecutor for State of Andhra Pradesh mainly drawn the attention of this Court to the statements of LW.3 - Garika Ravi Kumar, who is the neighbour of the *de facto* complainant, LW.5 - Muppalla Israel and LW.6 - Murikipudi Anjibabu recorded by police under Section 161(3) of Cr.P.C. A case was registered by police against the petitioner for the offences

punishable under Sections 457 and 380 of I.P.C., alleging that the petitioner-accused committed theft and taken away the valuable items like Fridge, TV, gold chain, certificates and cash. Section 457 of I.P.C. deals with lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment. Here the allegation against the petitioner is that in the absence of the *de facto* complainant, the petitioner trespassed into her house during night and committed theft of valuable articles and the allegation made in the complaint would attracts the offence punishable under Section 457 of I.P.C. Section 380 of I.P.C. deals with punishment for offence of theft committed in dwelling house. Undisputedly, the house of *de facto* complainant is a dwelling house and the alleged theft would fall within the ambit of Section 380 of I.P.C.

8. The main contention of the petitioner before this Court is that he is a practising advocate at Guntur and did commit no offence, but the statements of the witnesses recorded by the police under Section 161(3) of Cr.P.C., more particularly, LW.3 – Garika Ravi Kumar, clearly shows that the petitioner occupied the house portion of the *de facto* complainant removing the valuables and get it repaired and let out. Similarly, the masons, whose services were engaged by the petitioner i.e., LW.5 and LW.6, disclosed that their services were engaged for getting repairs to the building portion, which is in the occupation of the *de facto* complainant, by trespassing into the house.

9. Sri V.V.L.N. Sarma, the learned counsel for the petitioner, submits that the petitioner never trespassed into the house and he is in possession of the house.

10. Admittedly, civil disputes are pending and even in the earlier complaint, the address of the *de facto* complainant is shown at Door No.4-16-26, 3/1, Bharatpet, Guntur-2. But it is difficult to decide who is in possession of the property that first portion in the third portion of the building bearing Door No.4-16-26, 3/1. In any view of the matter, the dispute is with regard to possession of the property in pursuance of the alleged will executed by Rangarao in the year 2002 in respect of the southern portion of the building bearing Door No.4-16-431, which is the subject matter of the civil suit vide O.S.No.264 of 2010 and another suit vide O.S.No.342 of 2011 is also pending for the relief of declaration and recovery of possession filed against Kameswari, Rachakonda Venkata Durga Prasad and Kolavennu Venkata Durga Devi. However, at this stage, it is difficult for me to conclude whether the first or second floor portion in the house bearing Door No.4-16-421 is in possession of the *de facto* complainant or not is the question, which can be decided after completion of investigation and if the investigation established that she was in possession of the property and the petitioner committed theft of those articles, certainly the petitioner is disentitled to claim pre-arrest bail. But at this stage it is difficult for me to conclude that the petitioner did commit no offence based on the material. On the other hand, the statements of LWs.3, 5 and 6 would show that the petitioner trespassed into the house and committed theft of valuable articles. Hence, I find *prima facie* material against the petitioner to conclude

that he committed such an offence and thereby he is disentitled to claim pre-arrest bail at this stage since the investigation is not completed. Therefore, I am not inclined to enlarge the petitioner on pre-arrest bail.

11. In the result, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

Date: 20.03.2017
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