

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.11319 of 2015

ORDER:

This Criminal Petition is filed by the petitioner/ accused of Crime No.172 of 2015 of PS Nallakunta, Hyderabad, registered against him for the offences punishable under Sections 447, 427 and 506 IPC from the report of 2nd respondent dated 29.08.2015 for the alleged occurrence that took place more than three years three months back on 20.05.2012, after trespass and criminal intimidation.

2) The brief facts of the report reads as under:

a) The complainant, Bh.Srinivas, is a Central Government employee, Vidyanagar, Hyderabad. On 20.05.2012 at about 10.00 a.m., some Flat owners of Nagabhusham Nilayam Apartments, had telephoned and informed that two people entered into Flat No.102 and were trying to paint on the walls and he rushed to the apartment and noticed that one P.Mallikarjuna Rao, accused herein, along with a Sign Writer was standing in the stilt floor of the apartment. When the complainant had gone to Flat No.102, he had seen that word "NOTICE" was written on his flat wall and he immediately came down stairs into the stilt floor and asked the accused herein as to why he is damaging the walls, and why he had written on Flat No.102, upon which the accused abused the complainant in filthy language and replied that he want to write the complete alleged Court

attachment order on Flat No.102 and instructed the Sign Writer to write on the wall and he started writing.

b) The complainant also mentioned in the complaint that he had informed the same to his wife over phone. At about 11.30 hrs, the wife of complainant—Smt.Bh.Bhaskara Lakshmi, M.D. of M/s.Siva Sai Builders and Developers (P) Ltd also went to the apartment and noticed the wall writing by a painter on the wall at Flat No.102. When she objected for trespassing and taking the law into his hands, the said P.Mallikarjuna Rao did not care for her pleading and left the place. Hence, requested to take action.

3) It is also mentioned to take action as per the orders dated 09.07.2015 of this Court passed in W.P. No.17816 of 2012. It is the said report which was registered as crime supra, which is impugned in the quash petition contending that the Writ Petition No.17816 of 2012 was filed by said Smt.Bh.Bhaskara Lakshmi, W/o.Bh.Srinivas—complainant, the inaction of Chief City Police Commissioner, Hyderabad, and Deputy Commissioner for interference of some police constables of Nallakunta into a civil dispute between the Said Mallikarjuna Rao and the wife of the complainant—Bh.Bhaskara Lakshmi.

4) It is the contention of the learned counsel for petitioner/accused that the High Court disposed of the said writ petition

directing the police to consider and to take appropriate action on said representation dated 21.05.2012. The said crime registered after an inordinate delay of more than three years of the occurrence is unsustainable and is liable to be quashed, apart from none offences made out even from the report to register the crime against the accused much less to take advantage from any writ direction for disposal of any representation and not even with a direction to register the crime.

5) The other contention is that there is an attachment order in a money recovery suit against Smt.Bh.Bhaskara Lakshmi and the property obtained by petitioner/ accused herein in I.A. No.2436 of 2011 in O.S. No.560 of 2011 and that order was alleged to have written on the alleged to have written of the stilt floor wall of Flat No.102 as per the FIR averments and it is not even a case that the so-called accused remained in physical possession of the property or taken possession or trespassed with criminal intimidation or insult or annoy any person in possession of the property to commit an offence. It is the averment of the petitioner/ accused that the report filed is nothing but a counter blast to the civil suit and the attachment order, thereby the proceedings are liable to be quashed.

6) The order in W.P. No.17816 of 2012 running in one page shows that the Inspector of Police stated that the

representation was pending consideration before the authorities and that necessary action would be taken after conducting a detailed enquiry into the contentions raised by the petitioner therein and the writ petition is accordingly disposed of directing the police authorities to consider and take appropriate action on the petitioner's representation dated 21.05.2012, if not already taken, in accordance with law within two weeks from the date of receipt of a copy of this order.

7) Heard learned counsel for the petitioner and learned counsel for the respondent No.3.

8) The petitioner/ accused herein filed a suit in O.S. No.560 of 2011 on the file of III Additional Chief Judge, City Civil Court, Hyderabad for recovery of an amount of Rs.22,00,000/- shows that it is an outcome of Sale Agreement-cum-General Power of Attorney, dated 22.08.2009 between the defacto complainant and accused, saying that Rs.10,00,000/- was paid as advance sale consideration, Rs.4,80,000/- towards interest @ 24% per annum and Rs.7,20,000/- towards goodwill amount @ Rs.30,000/- per month. The representation of the defacto complainant and his wife to the Commissioner of Police, Hyderabad, dated 21.05.2012 against the said Mallikarjuna Rao reads that the said Mallikarjuna Rao filed O.S. No.560 of 2011 pending on the file of III Additional Chief Judge, City Civil Court,

Hyderabad and there was an interim attachment order dated 31.01.2012 in I.A. No.2436 of 2011 in O.S. No.560 of 2011 directing that in the event of non furnishing of security within 48 hours for Rs.22 lakhs, to attach Flat No.102 in 1st floor of Nagabhushanam Nilayam Apartment, Lalitha Nagar, Adikmet, but the Court below implemented the same on 24.02.2012 by pasting the Court order on the wall of the flat. Aggrieved by that, the defacto complainant and his wife filed C.R.P. No.793 of 2012 before this Court and this Court modified the said order to furnish security for Rs.15,00,000/- lakhs within a period of two weeks from that day i.e., 23.02.2012 and the defacto complainant offered security on 06.03.2012, which is pending. While so, on the previous day 20.05.2012 at about 10.00 a.m, some of the flat owners telephoned her saying two people entered into flat No.102 and trying to paint on the walls and immediately she deputed her husband, who reached the spot and found accused with one Sign Writer standing on the stilt floor, and on saying her husband, Mallikarjuna Rao went and brought the police men, by name Mohan Rao and another of PS Nallakunta. Her husband along with Mallikarjuna Rao and two constables went to police station and her husband lodged police complaint against said Mallikarjuna Rao for trespass. Surprisingly, Ravi Kumar, Sub-Inspector of Police refused to entertain the complaint and in turn informed that Mallikarjuna Rao had taken written permission from ACP, Kachiguda, for writing on

the wall of the flat. The S.I. was not in a mood to see the order passed by the High Court in the writ petition to furnish security and kept her husband waiting in the police station and allowed Mallikarjuna Rao and two constables go to the Flat and write the attachment order. She had gone to the police station at 1.00 p.m. where her husband was kept waiting and informed the S.I with regard to the order in C.R.P. No.793 of 2012, dated 23.02.2012 for furnishing security and there is no attachment order and it is a civil dispute and that the police cannot interfere and providing police security to Mallikarjuna Rao to write on the walls of the complainant is a contempt and unfair and no case for the offence of trespass so far registered against Mallikarjuna Rao and in view of the above to deal with the matter seriously since prestige of that she lost.

9) From the report, what she stated is non-interference of police and non-registration of a case for the offence of trespass case. There is nothing even to prevent her or her husband to file a private complaint and it no way refers even any written report submitted to the police. What all she stated is that the said Mallikarjuna Rao came to the flat and cause written the attachment order painting on the wall of Flat No.102.

10) Even from the representation dated 21.05.2012, what the modified order of the High Court order dated 23.02.2012

in C.R.P. No.793 of 2012 speaks is to furnish security of Rs.15 lakhs within two weeks from that day, failing which to attach and once such is the case, though there is a requirement by attachment of the publicity and affixure at conspicuous place of the property to the public knowledge for the fact that pending attachment any alienation is perse void as per Section 64 of C.P.C., and the public shall not suffer; there is no justification for said Mallikarjuna Rao to cause write about the attachment order, but for the Court Amin to cause write, however that perse not a criminal offence.

11) Having regard to the above and even mentioning about the attachment order on the wall cannot be said to be a criminal trespass within the meaning of Section 441 IPC with intent to commit an offence of criminal intimidation or assault or annoy to any person in possession. Further even the alleged trespass is registered for the offence punishable under Section 447 IPC provides for punishment for three months or with fine and as per Section 468 Cr.P.C., the Limitation provided is upto one year for the offence punishable with imprisonment of one year.

12) The crime is registered by the police on 29.08.2015. Even taken the Section of law that applies under Section 448 IPC, which provides punishment upto one year or fine or with both from the alleged tress pass, within knowledge of the complainant taken place on 20.05.2012, there is no any even

private complaint filed for no crime registered, to take such recourse before 21.05.2013, the crime registered is barred by limitation.

13) There is nothing to say any mischief causing damage to the amount of above Rs.50/- by then to attract the offence under Section 428 IPC. Otherwise it is Section 426 IPC provides with imprisonment upto 3 months or with fine or with both; that is also barred by limitation of one year from the date of alleged occurrence within the knowledge of complainant either to file private complaint or to register a crime from any report. Practically there is no any criminal intimidation from the report within the meaning of Section 503 IPC by threatening another with any injury to the person's reputation or property etc., Even taken to attract the offence under part-I of Section 506 IPC, it provides with punishment upto two years, for which the limitation is three years and the crime registered was on 29.08.2015 of the occurrence of 20.05.2012, otherwise beyond three years and even to say, equally, if at all even taken the value of damage is above Rs.50/- provides with punishment upto three years. The limitation is maximum three years that also barred by law. Thus, suffice to quash the proceedings of the crime registered is not only with no merits but also barred by limitation.

14) Accordingly, the Criminal Petition is allowed and the proceedings in Crime No.172 of 2015 of P.S. Nallakunta, Hyderabad against petitioner/ accused are hereby quashed. The bail bonds of the petitioner/ accused, if any, shall stand cancelled.

15) Miscellaneous petitions, pending if any, in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:08.12.2017

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