

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.11350 of 2010

ORDER :

The petitioner M.V.V.Jagan Mohan Rao/ A.1 in C.C.No.184 of 2002 pending on the file of IV Addl.Judl.First Class Magistrate, Kakinada, is Inspector of Police. It is on the private complaint of the 2nd respondent, the learned Magistrate taken cognizance for the offences punishable u/ sec.341, 504 r/ w 34 IPC. As per said private complaint averments, the complainant is the tenant of shop No.620 which is premises of the A.2 landlady who filed RCC No.42 of 1992 against him before the Junior civil Judge-cum-Rent Controller, Kakinada, for eviction of the 2nd respondent and while those eviction proceedings are pending, the A.2 influenced the petitioner and pursuant to which the 2nd respondent-defacto complainant was asked to attend the police station by the petitioner/ A.1 on 09.12.1998 at 6.00 P.M., and when attended he used vulgur language and insulted him and asked him to vacate the shop and so saying he confined him in the police station at 6.00p.m. to 2.00a.m. on 10.12.1998 for a period of 8 hours.

The contentions in the quash petition are that the petitioner/ A.1 is innocent and is falsely implicated in this case and it is also the contention that the original C.C.No.335 of 2000 that was taken cognizance and after trial faced by the landlady/ A.2, since the case of the petitioner was separated and allotted separate C.C.No.184 of 2002 impugned herein, ended in acquittal

on 15.12.2004 and thereby the proceedings in the Calander Case supra against the petitioner are liable to be quashed.

Heard the learned counsel for the petitioner and also the learned Public Prosecutor representing the 1st respondent-State. From the record notice issued wayback on 14.08.2012 to the defacto-complainant-2nd respondent and there is no response to represent the matter either through advocate or in person.

Perused the quash petition grounds and the acquittal judgment of the original case in C.C.No.335 of 2000 dt.15.12.2004 in so far as A.2.

On perusal of the said judgment shows on behalf of the prosecution, three witnesses were examined including the defacto-complainant-the so called tenant as P.W.1 besides D.Sathyanarayana as P.W.2 and Ch.Sathyanarayana as P.W.3 and the prosecution placed reliance on Exs.P.1 to P.16 and the accused on Ex.D.1 to D.3. The judgment reads that from the evidence of P.W.1 in the eviction matter outcome of R.C.C.No.42 of 1992, the matter is pending before the Supreme Court and the A.2 landlady tried to evict him through A.1 on 08.12.1998 on which day he kept stock outside of the shop to get it painted and while the workers were painting the shop, the defacto-complainant went for lunch, in the meantime the accused came to the shop along with the followers and asked the workers to go out of the shop and photographed the shop while its vacation and on knowing the same through somebody, he rushed to the shop and questioned the

accused and his followers about their highhanded acts for which the accused threatened him and challenged him to see how he would continue, else to vacate and he received telegram from the accused on 09.12.1998 and 10.12.1998 and he replied to it. While so, on 09.12.1998 at about 6.00 P.M. he received message from III Town Police Station Kakinada, and attended the police station, where the Sub Inspector of police/ A.1 asked him to vacate the shop immediately and abused in vulgar language and when he tried to explain that there is a civil litigation pending, the A.1 warned him severely and threatened with dire consequences and insulted which was at the instance of A.2-landlady, relieved by sentry at 2.00 A.M. on 09.12.1998 and on 10.12.1998 he issued registered notice to the Sub Inspector and to the landlady and the notice was received by the Sub Inspector/ A.1 and the landlady/ A.2 returned notice, he sent telegram and also to the Sub Inspector who refused that was also refused to receive and he is continuing as a tenant. In the cross-examination, however he deposed that there are disputes between them since 1993 and he has no idea about the eviction order passed in RCC No.42 of 1992 on 14.06.1999 and the complaint filed by him and the alleged incident was after the eviction order and before the appeal RCA No.18 of 1999 which was also admittedly dismissed in 2002 and he since his father's time of 1978 continuing as a tenant and he denied of no such incident happened. The P.W.2 deposed of he is doing Real Estate business and he knows P.W.1 and A.1 in the cross-examination deposed that

P.W.1 is known to him with acquaintance more than 8 years and opposite to the shop of there are several hospitals including of one Vijayalaxmi and there is also medical shop by the side of the shop of P.W.1 and there are several tea vendors there in and around with bunks and P.W.3 also deposed in that line. From that evidence, it is observed that there is no evidence on record to show that the A.2 instigated the A.1 to detain the P.W.1 in police station on the alleged day and time for 8 hours and prosecution miserably failed to prove the case.

In fact from the very case of the P.W.1-complainant, at the instance of A.2-landlady and A.1 Sub Inspector of Police, called him even what is referred supra it is after the vacation order passed in RCC No.14 of 1992 and the alleged incident was on 09.12.1998. The eviction order in RCC was in 1999 even from what is referred supra appeal also filed in 1999 however, the complaint filed is on 25.01.2000. There is no explanation for two years delay in giving the complaint even taken the allegations as if true though that was not discussed in the acquittal judgment so far as A.2 concerned, for the alleged wrongful confinement by A.1 of P.W.1 for the offence u/sec.341 IPC, which is punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. Once such is the case, barred by limitation even by the time, the private complaint filed and the cognizance taken, suffice to say the continuation of the case against the A.1 even after the case

against the accused-A.2 is acquitted is nothing but a futility also from the bar of limitation from the prosecution nothing but abuse of process.

In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.184 of 2002 pending on the file of IV Addl.Judl.First Class Magistrate, Kakinada. The case against him is acquitted and his bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:13.09.2017
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Dr. B.SIVA SANKARA RAO J,

