

THE HON'BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL PETITION NO.836 OF 2011

ORDER:

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

The present Criminal Petition is filed by the petitioner seeking to quash the proceedings initiated against him in CC.No.546 of 2009 for the offences under sections 509 and 448 of IPC.

Brief facts leading to filing of this criminal petition are as follows:

On 14.4.2009 at about 2145 hours at Odeon Enclave, Domalguda, Hyderabad, the petitioner herein alleged to have abused the 2nd respondent herein and trespassed into her Flat while she was watching TV in her flat along with her daughter leaving the front door of the flat open and waiting for the arrival of her husband. At that time, her neighbour i.e., the petitioner herein who is in the habit of drinking liquor on the terrace of the building every night, was standing in front of the door and gazing at her. Upon observing the same, the 2nd respondent got frightened with his attitude and when asked him as to what he wanted and why he was standing at the door, he abused her in most unparliamentary language and

tried to trespass into her flat. Apprehending danger, she closed the door of her flat from inside and contacted the Inspector of Police, Chikkadpally P.S. informing about the incident and requested him to take action. Basing on the said complaint, a crime was registered vide FIR.No.192 of 2009 for the above said offences. After investigation, a charge sheet has been filed.

On perusal of the contents in the charge sheet, the undisputed facts are that on 14.4.2009, when the 2nd respondent was watching TV leaving open the front door of her flat, the petitioner herein who is a neighbour, came to her flat and started gazing at her. When the 2nd respondent questioned about the attitude of the petitioner, he abused the 2nd respondent in most unparliamentary language and he tried to trespass into her flat, and apprehending danger, she closed the door, and informed to the Inspector of Police, Chikkadpally P.S. As the petitioner was creating lot of problems to them and their neighbours, she gave a complaint in the P.S. on 14.4.2009. That apart, even LW3 Sri T.V.S. Rao, Circumstantial witness, resident of the same apartments, who was examined, also gave a statement that on 14.4.2009, in the evening at about 2145 hours, on receipt of telephone, he went to the flat

of the 2nd respondent and by that time, the petitioner had already left the place.

The said charge sheet was taken on file and the case was numbered as CC.No.546 of 2009. Aggrieved by the same, the present Criminal Petition is filed.

Learned counsel appearing for the petitioner would contend that the petitioner has not committed any offence much less the offences as alleged against him by the 2nd respondent. He never stood in front of the flat of the 2nd respondent and in fact he was passing through the corridor of the flats. Therefore, the offences alleged against him are not correct.

Per contra, learned counsel for the 2nd respondent would submit that when the 2nd respondent questioned the petitioner as to why he was standing in front of her flat and gazing at her, the petitioner has abused her in unparliamentary language and the attitude of the petitioner in attempting to trespass into the flat of the 2nd respondent would amount to commission of an offence under sections 448 and 509 of IPC.

In support of his contentions, learned counsel for the 2nd respondent has relied upon the following Judgments of the Honourable Supreme Court:

1. *STATE OF MAHARASHTRA AND ANOTHER vs. MADHUKAR NARAYAN MARDIKAR*¹ . In the said judgment, the Apex Court was pleased to consider the right of privacy of a woman vis-à-vis Article 21 of the Constitution of India. The relevant portion of the Judgment is as follows:

“8. The High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government Official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence. But in the present case we find that her evidence is not only corroborated in material particulars by the evidence of her husband but also by the evidence of PSI Ghosalkar and other members of the police party who had accompanied him on receipt of a phone call from the respondent. As pointed out earlier Banubi who was herself living in a glass house considering her antecedents could never have behaved in the manner she is alleged to have behaved if the respondent had merely raided her house and drawn up

¹ AIR 1991 SUPREME COURT 207

a nil panchanama. In that case she would not have approached the District Superintendent of Police at the earliest opportunity and would not have lodged a complaint of misbehaviour against the respondent. We, therefore, find it difficult to agree with the High Court that merely because Banubi is a woman of doubtful reputation it is unsafe to rely on her testimony. We have carefully examined the evidence tendered before the Inquiry Officer and we are satisfied that the High Court was completely wrong in concluding that her evidence was not corroborated in material particulars by independent evidence. We are afraid that the High Court embarked upon a reappreciation of the evidence as if it were sitting in appeal against the decision of the departmental authorities. Its reappreciation of the evidence is also unsustainable.”

2. *KANWAR PAL s. GILL vs. STATE (ADMN. U.T. CHANDIGARH) THRO, SECY., AND ANOTHER*². Basing on this decision, learned counsel for the 2nd respondent would submit that as far as the outraging modesty of women is concerned, it has to be read down into Section 509 of IPC since whoever intending to insult the modesty of a woman intrudes upon the privacy of such woman, shall be punished.

The language used in Section 509 of IPC is that whoever, intending to insult the modesty of any women, intrudes upon the privacy of a woman, shall be punished with simple

² AIR 2005 Supreme Court 3104

imprisonment for a term which may extend to three years and also with fine.

As far as the offence under section 448 of IPC is concerned, house trespass as defined under 442 IPC is that whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house trespass.

In the case on hand, the allegation made against the petitioner herein in the charge sheet is that the petitioner herein was standing in front of the flat door of the 2nd respondent and was staring at her. Upon such act of the petitioner, when questioned by the 2nd respondent, the petitioner has abused the 2nd respondent in unparliamentary language. However, counsel for the petitioner would contend that he was not standing in front of the door of the flat of the 2nd respondent but he was passing through the corridor. Be that as it may, apart from the said disputed question of fact as to whether he was standing in front of the door of the 2nd respondent flat or passing through the corridor, the abusing of a woman by standing in front of the door of her flat would prima facie satisfy the ingredients of Sections 448 and 509 IPC.

Thus, whether the petitioner has committed the offences or not, in the light of the above disputed question of fact, can be elicited only during the course of trial. Therefore, this Court is not inclined to interfere at this stage.

Accordingly, the criminal petition is bereft of merits and is hereby dismissed. Consequently, CrI.M.P.2907 of 2011 seeking to vacate the interim order dated 2.2.2011 is allowed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date:19.12.2017

KPM



KESHAVA RAO,J