

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2296 OF 2017

ORDER:

Requesting to exercise the power under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') and to quash the proceedings in C.C. No.119 of 2016 on the file of II-Additional Judicial Magistrate of First Class, Eluru, West Godavari District, Andhra Pradesh State, the present petition is filed by the accused Nos. 1 and 2 respectively in the aforesaid Calendar Case.

2. The petitioners herein – accused Nos.1 and 2 alleged to have committed the offences punishable under Sections 448 and 506 read with Section 34 of I.P.C.

3. Heard Sri Ghanta Sridhar, the learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The main submission of the learned counsel for the petitioners has been, the 2nd respondent/*de facto* complainant is perfectly aware that M/s. Indus Towers Limited was promoted, by Bharati Infratel Limited, Idea Cellular Towers Limited and the Vodafone Infrastructure Limited, for the purpose of providing common telecom infrastructure and by operation of law since Hon'ble High Court of Delhi passed an order dated 18.4.2013 in Company Petition No.141 of 2012, transfer of the assets of all the three infrastructure companies to

Indus Towers Limited and thereby Indus Towers Limited has become the owner of the towers, including the subject tower, and stepped into the shoes of Bharathi Infratel Limited and managing all the towers, including the subject tower, by remitting the rent to the 2nd respondent, who acknowledged the receipt of rents for using the terrace of the building by constructing a tower, that was erected by Bharathi Infratel Limited, with whom the 2nd respondent had entered into Leave and License Agreement, dated 25.8.2007.

5. Learned counsel for the petitioners would submit that the notice got issued by the 2nd respondent dated 12.11.2015 of Bharathi Infratel Limited to stop the transmission from the tower within 24 hours and remove the tower, machinery etc., failing which he would do the same and recover the expenses from both was suitably replied by M/s. Indus Towers Limited on 19.11.2015. The submission of the learned counsel is that the 2nd respondent herein earlier filed a complaint with the Station House Officer, III-Town P.S., Eluru, on 16.11.2015 to register the case and conduct investigation and punish the petitioners herein in the Court of law and thereafter, also filed W.P.No.39494 of 2015 seeking a *Writ of Mandamus* to declare the action of the Station House Officer, the 3rd respondent therein, in not registering the crime against the complaint given by him as illegal, and sought a direction to take necessary action as per law.

6. The learned counsel would further submit that the 2nd respondent made a representation dated 23.11.2015 to the concerned

Assistant Divisional Engineer, Electricity Department, requesting to discontinue the power supply stating that there is no valid license agreement in favour of Indus Towers Limited, and, therefore, approached this Court by filing W.P. No.40440 of 2015 seeking a direction to withdraw the permission granted by the Municipal Corporation of Eluru for erection of cell tower and also to take action on his representation dated 23.11.2015, which petition, according to the learned counsel, is still pending and no orders have been passed by this Court.

7. The learned counsel also would submit that the 2nd respondent having failed in his all attempts to get some favourable order in the writ petitions, filed the present complaint on 5.1.2016, which was registered as First Information Report in Crime No.7 of 2016 for the offences punishable under Sections 448, 354 and 506 read with Section 34 of I.P.C. Relevant documents have been filed along with the present petition, which are (1) Copy of Leave and License Agreement dated 25.8.2007, (2) Copy of Notice dated 5.10.2015 got issued by the 2nd respondent to M/s. Bharathi Infratel Limited, (3) Copy of Notice dated 12.11.2015 got issued by the 2nd respondent to M/s. Bharathi Infratel Limited and M/s. Indus Towers Limited, (4) Copy of Complaint, dated 16.11.2015 got issued by the 2nd respondent to the Station House Officer, III-Town P.S., Eluru, (5) Copy of Reply notice dated 19.11.2015 got issued by Indus Towers Limited to the 2nd respondent, (6) Copy of Representation

dated 23.11.2015 given by the 2nd respondent to the Municipal Commissioner, Eluru, (7) Copy of petition in W.P. No.39494 of 2015, dt. Nil, filed by the 2nd respondent, and (8) Copy of petition in W.P. No.40440 of 2015, dt. Nil, filed by the 2nd respondent.

8. The learned Additional Public Prosecutor for the State of Andhra Pradesh would submit that there are *prima facie* allegations that can be culled out from the complaint as well as the statements of witnesses recorded under Section 161 (3) of Cr.P.C. and, therefore, requests to dismiss the petition.

9. The submission of the learned counsel for the petitioners has been that the petitioners are falsely implicated only with a view to see that the tower is removed and the petitioners would vacate the terrace on which the tower was erected originally by M/s. Bharathi Infratel Limited. The main submission of the learned counsel is, the very fact that the investigating officer, on completion of investigation arrived at the conclusion that the offence punishable under Sections 354 IPC was made out and the statements of witnesses do not disclose commission of the said offence and deleted the said offence and filed charge-sheet only for the offences punishable under Sections 448 and 506 read with Section 34 of I.P.C. is sufficient to hold the false implication of the petitioner.

10. Now, the short question is, whether the *de facto* complainant has converted the civil dispute into criminal action? and, Whether

there are *prima facie* allegations to connect the petitioners with their complicity in the commission of the offences alleged against them?

11. Incidentally, it is to be seen, whether the 2nd respondent/*de facto* complainant did receive rentals from M/s. Indus Towers Limited at any time, and, if so, what would be the effect of receipt of rentals?

12. Certain strong circumstances even at this stage would favour the petitioners in arriving at the conclusion that the 2nd respondent/*de facto* complainant actuated by ill-will or false motive alleged not only the offences punishable under Sections 448 and 506 of IPC read with Section 34 of IPC, but also the offence punishable under Section 354 of IPC, which can be construed as a draconic penal provision, which in fact strengthens the stand of the petitioners that they are falsely implicated by virtue of the undisputed fact that the investigating officer deleted the said offence when charge-sheet was filed holding that none of the witnesses did speak about taking place of the said offence. This, certainly, accounts for a strong indicator in the direction of showing that the petitioners actuated by ill-will or false motive filed a complaint and obviously it appears only to see that M/s. Indus Towers Limited would vacate terrace by removing the erected tower which in fact can only be done when the 2nd respondent would approach the Civil Court seeking redressal of his grievance, therefor, based on the Leave and License Agreement. Further circumstance that favours the petitioners and disfavours the 2nd respondent is, that it

is not as though, that M/s. Bharathi Infratel Limited surreptitiously gave the management of the operation of the subject tower to M/s. Indus Towers Limited and the said exercise was done by operation of law in view of the order passed by Delhi High Court, dated 18.4.2013, in Company Petition No.141 of 2012 whereby M/s. Bharathi Infratel Limited, Idea Cellular Towers Limited and the Vodafone Infrastructure Limited transferred the assets to M/s. Indus Tower Limited and thus, it is to be construed that Indus Towers Limited has legally stepped into the shoes of M/s. Bharathi Infratel Limited.

13. Therefore, the 2nd respondent cannot now point out that without his consent and knowledge, M/s. Bharathi Infratel Limited allowed M/s. Indus Towers Limited to operate the tower surreptitiously, appears to be wholly incorrect.

14. The Notice dated 5.10.2015, which is termed as 'Urgent Notice' got issued by the 2nd respondent to M/s. Bharathi Infratel Limited would clearly show that on enquiry the 2nd respondent came to know that M/s. Bharathi Infratel Limited has merged with M/s. Indus Tower Limited and so it has been using the said premises. Thus, this circumstance is sufficient to cut at the root of the complaint allegations levelled against the petitioners.

15. Thus, even at this stage the contents of the said 'Urgent Notice', only gives rise to existence of a civil dispute, but converted it into a criminal action. Yet another notice issued by him dated 12.11.2015

by the 2nd respondent is nothing but a termination notice asking the petitioners to remove the tower, lest he would remove the same at his expenses and recover the same from the petitioners. Thus, there exists a civil dispute but not a criminal action.

16. Turning to the 2nd respondent/*de facto* complainant filing W.P. No.39494 of 2015 and W.P. No.40440 of 2015, he was unsuccessful in getting any favourable orders and even representations to the concerned authorities, who are the respondents in the writ petitions respectively, made by him prior to filing of the said writ petitions, would all give an irresistible inference that the 2nd respondent, having failed in his all attempts, approached the police by lodging a complaint resorting to coercive measure by invoking the penal provisions of Indian Penal Code, though, the dispute is purely of civil nature, and the 2nd respondent/ *de facto* complainant, for redressal of his grievance, ought to have approached the Civil Court basing on the Leave and License Agreement and its determination by him by issue of notice under the relevant provisions of the Transfer of Property Act.

17. Nothing more is required to arrive at that the prosecution of the petitioners in Calendar Case No.119 of 2016 at the behest of the 2nd respondent/*de facto* complainant would amount to the abuse of process of law and the present case falls in the category of cases for grant of exceptional relief by exercise of inherent power under Section 482 of the Code.

18. Accordingly, the present Criminal Petition is allowed holding that the prosecution of the petitioners would amount to the abuse of process of law as the dispute is purely a civil dispute and the 2nd respondent/ *de facto* complainant attempted to convert it into criminal action by laying a complaint, based on which First Information Report was registered and later cognizance was taken and registered as C.C. No.119 of 2016 by the concerned Magistrate, and, therefore the proceedings in C.C. No.119 of 2016 on the file of II-Additional Judicial Magistrate of First Class, Eluru are quashed against the petitioners.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

Dt. 03.04.2017
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A. SHANKAR NARAYANA, J

