

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9796 of 2016

ORDER:

Heard both sides and perused the grounds urged in the quash petition by the petitioners/accused Nos.1 to 16 of C.C.No.421 of 2016 on the file of Judicial Magistrate of First Class, Bhadrachalam, for the offences punishable under Sections 143, 427, 447, 294(b) & 506 r/w 34 IPC, which is outcome of the private complaint of the 2nd respondent-defacto complainant referred to police from which the police after investigation by examining the witnesses filed the final report and from the protest raised by the defacto complainant, the learned Magistrate has taken cognizance for the offences supra by recording sworn statements of the complainant and 5 more witnesses as LWs.1 to 6 by a detailed order running in 6 pages, which is subject matter of impugnement herein.

No doubt the police final report opinion is not binding on the Court if at all to take cognizance and defer with the opinion irrespective of any protest of the defacto complainant apart from the right of intimation of the referred report to the defacto complainant, to raise protest and therefrom to take cognizance if any on the protest also by the learned Magistrate as per the settled expression of the Constitution Bench of the Apex Court in **Dharam Pal Vs. State of Haryana**¹.

Here the protest is undisputedly against the original referred report opinion of the police. The taking of cognizance differing with the opinion of the police final report is either from perusal of the

¹ 2014 (3) SCC 306

material covered by the police referred report or by taking further evidence of the witnesses by examination as a private complaint pre cognizance procedure contemplated as the case may be. However the learned Magistrate cannot miss the fact that it is not a new private complaint, but for a protest and the recording of sworn statement to take cognizance is with reference to and against to the referred report protest if at all by examination of the witnesses referred in the referred report of the investigation by the police to explain if at all any statement as if not stated is recorded or to say further facts or to say what he wanted to say was not recorded and was not examined. A perusal of the learned Magistrate's order though not in specific words in proceeding as if a fresh private complaint though this is the law that to be kept in mind in considering a protest to take cognizance if at all after recording further sworn statement of the complainant and the witnesses to be produced if any in new, apart from those already examined by IO as the case may be.

With these factual background undisputedly in the referred report of the police, it is mentioned that there is a civil suit for injunction between some of the accused persons and third persons and the injunction is in favour of the accused in relation to the non-interference to say that so far as the property covered by the well in question is concerned, there is prima facie possession with the accused persons. Undisputedly the defacto complainant says that there is the well in question joint with common contribution dug for purpose of drinking water to the defacto complainant and some of the accused persons as well. Once such is the case the well shall be maintained by both. Leave it as it is a matter of civil

dispute if at all still left open to revive the well and reconstruct from any such existing joint right over the area covered by the well to revive. So far as closing of the well concerned, it can be said practically for the common good if not chosen to come forward by the complainant at least by the accused to close the same and filling with earth for humanly dangerous for the persons of the dwelling area it is a well below to the land level without even protection or its existence and highly with torny for ill-visibility.

Here it is not the crux for go further as civil dispute if at all civil rights are left open to the parties to raise. Now coming to the core as to the offence under Section 294(b) IPC, it speaks whoever to the annoyance of others sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. In fact what the private complaint of the defacto complainant speaks is abused as langakodaka and if he comes across to prevent the filling of the well also to bury him there itself by filling with earth. Definitely it indicates the criminal intimidation as contemplated by Section 506 IPC if at all and Section 294 (b) IPC apart from not made out is also included therein for nothing to take a separate cognizance for it. Leave about the investigation material of the son of the complainant among other witnesses stated as if the defacto complainant was not there at the time of filling of the earth of the said bore well in question. The defacto complainant's private complaint itself speaks it was happened in his presence, thereby it is a matter to go for trial. Once such is the case but for the offence under Section 294(b) and 143 IPC for nothing to show the persons

armed as unlawful assembly to riot against the defacto complainant for no harm is claimed. Hence, the offence under Section 506 r/w 34 IPC if any sustains, but not the other provisions of law since same is otherwise non-cognizable offence taken cognizance with cognizable offence at this stage this sustainability of merits after trial cannot be gone into.

Accordingly and in the result, the Criminal Petition is allowed in part by quashing the offences under Sections 143, 427, 447 & 294(b) IPC, but for offence under Section 506 r/w 34 IPC. Needless to say, there are 16 accused persons to face trial, if at all to file application under Rule 37 of Criminal Rules of Practice for one to represent the others, the learned Magistrate shall hear and dispose of with conditions of personal appearance as and when required.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.09.2017
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