

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.38186 OF 2017

ORDER:

This writ petition is filed under Article 226 of Constitution of India to quash the proceedings in Crime No.132 of 2014 pending on the file of Nallapadu Police Station, Guntur District (S.C.No.113 of 2015 on the file of II ASCJ, Guntur), registered for the offence punishable under Sections 307, 420 and 506 of Indian Penal Code (for short "I.P.C.")

Respondent No.2 herein filed a private complaint against the petitioner herein for the offence punishable under Sections 307, 420 and 506 of I.P.C. and the same was referred to the police by exercising power under Section 153 (3) of Cr.P.C., police registered the same as case in Crime No.132 of 2014 and issued F.I.R.

During investigation, police examined as many as five (5) witnesses and recorded their statements under Section 161 of Code of Criminal Procedure (for short "Cr.P.C.").

Based on the material collected during investigation, the investigating agency came to the conclusion that the petitioner herein *prima facie* committed offence punishable under Sections 307, 420 and 506 of I.P.C., filed charge sheet before the Special Mobile Magistrate, Guntur, who in turn took the case on file and registered the same as P.R.C. since the offence is exclusively triable by the Court of Sessions, following the procedure prescribed under Section 209 of Cr.P.C. committed the case to the Sessions Division, who in turn registered the same as Sessions Case and made over the same to Assistant Sessions Judge for disposal in accordance with law.

The main contention of the respondent No.3 is that on 21.06.2007, the accused mortgaged his 200 sq.yards of land in Pedapalakaluru village with UTI Bank now called as AXIS Bank and obtained loan from the bank. On 13.01.2012, the accused entered into an unregistered agreement of sale with respondent No.3 for sale consideration of Rs.7,100/- per sq. yard and received Rs.4,00,000/- as advance and informed that the property was mortgaged with UCO bank, obtained loan and agreed to redeem the property from mortgage and agreed to receive the balance of sale consideration within 10 days and execute the registered sale deed in favour of respondent No.3.

While the matter stood thus, the respondent No.3 along with two others approached the petitioner and expressed his readiness to pay balance of sale consideration to get the land registered, but the petitioner postponed the same on one pretext or the other. Later, on 27.05.012 the petitioner approached the respondent No.3 and requested for payment of some amount towards expenses, on that the respondent No.3 in the presence of L.Ws.2 and 3 paid an amount of Rs.30,000/- and obtained endorsement on the reverse of the agreement of sale to that effect and the same was attested by L.Ws.2 and 3.

Thereafter, three attempts were made to get the registered sale deed, but the petitioner avoided to register the land. Thereupon, the respondent No.3 entertained a doubt about encumbrance on the property and obtained Encumbrance Certificate from the Sub-Registrar office and found that the accused mortgaged the property with UTI Bank, now called as AXIS Bank, but not with UCO Bank. The respondent No.3 along

with three (3) others approached the petitioner and questioned about wrong mentioning of the bank, then the accused admitted that he intentionally mentioned name of the bank wrongly, but expressed his willingness to register the site, but postponing the same on pretext or the other.

On 15.12.2013 at about 11.00 a.m. on information that the petitioner/accused is available at the disputed site, the respondent No.3 along with L.Ws.2 and 3 approached the petitioner, requested him to execute registered sale deed or to return the amount which he received as advance, thereupon the petitioner grew wild and attacked the respondent No.3 and tried to stab him with a crowbar; then L.Ws.2 and 3 rescued the respondent No.3 and sent him away from the scene. While the respondent No.3 was running away from the scene, the petitioner/accused threatened to do away with his life if he again insists for registration of land or to return the advance sale consideration.

Thus, the allegations made in the charge sheet, based on the investigation done by the investigating agency, disclosed commission of offence punishable under Sections 307, 420 and 506 of I.P.C. by the petitioner.

The present petition is filed to quash the proceedings in S.C.No.113 of 2015 pending on the file of II ASCJ, Guntur on the ground that the dispute is purely civil in nature and the respondent No.3 did not sustain any injury and mere making attempt would not constitute any offence punishable under Section 307 of I.P.C. and in the absence of any injury on the body of respondent No.3 filing charge sheet against the petitioner for the offence punishable under Sections 307 and 506 of I.P.C. is nothing

but abuse of process of law and requested this Court to quash the proceedings.

Sri Kuna Reddy Anji Reddy, learned counsel for the petitioner, vehemently contended that the petitioner did commit no offence and mere making attempt would not constitute an offence punishable under Sections 307 and 506 of I.P.C., that apart the dispute is purely civil in nature and a suit O.S.No.405 of 2014 is pending between the parties, therefore, the trial cannot be continued since the charge sheet is filed as an abuse of process of law and requested this Court to quash the proceedings.

Learned Assistant Government Pleader for the State of Andhra Pradesh contended that when the investigation was completed and charge sheet was filed before the Magistrate, who in turn registered the same as P.R.C. and committed the case to the Court of Sessions by following the procedure prescribed under Section 209 of Cr.P.C., the remedy open to the petitioner is to file an application for discharge and when such remedy is available under the Statute, the petitioner is not entitled to invoke the jurisdiction under Article 226 of Constitution of India and prayed to dismiss the petition with a direction to approach the competent Court for discharge of the petitioner.

As seen from the allegations made in the charge sheet, it is evident that the respondent No.3 entered into agreement to purchase an extent of 200 sq. yards from the petitioner at the rate of Rs.7,100/- per sq. yard i.e. total consideration of Rs.14,20,000/-, the petitioner executed agreement of sale in his favour incorporating usual terms of agreement of sale. One of the terms of the agreement is that the respondent No.3 shall pay the

balance sale consideration within 10 days and that the petitioner shall clear the bank loan in UCO Bank, obtain and hand over the original documents to the respondent No.3 and execute a registered sale deed. In fact no mortgage was created with UCO Bank, but it was mortgaged with UTI Bank now called as AXIS Bank. Thus, the petitioner allegedly made a dishonest representation to part with huge amount of Rs.4,00,000/- by the respondent No.3. Making false representation both oral and in the agreement knowing fully well about mortgage of property with UTI Bank would *prima facie* constitute offence punishable under Section 420 of I.P.C.

It is the case of the respondent No.3 that when he insisted the petitioner to execute registered sale deed on receipt of balance sale consideration, he avoided the same. While so, on 15.12.2013 at about 11.00 a.m. the respondent No.3 along with two others approached the petitioner and requested him to execute registered sale deed in his favour, he grew wild and attacked the respondent No.3 and tried to stab him with a crowbar, but he was rescued by L.Ws.2 and 3 and the petitioner also threatened to kill the respondent No.3 if he again insists the petitioner to execute registered sale deed. The allegation made in the charge sheet that the petitioner attacked the respondent No.3 to stab with a crowbar would constitute offence punishable under Section 307 of I.P.C.

The main contention of the learned counsel for the petitioner is that the respondent No.3 did not sustain even a scratch over his body in the alleged incident of attempt to kill respondent No.3. In the absence of any injury over the body of respondent No.3, the

allegation would not constitute any offence much less the offence punishable under Section 307 of I.P.C.

Section 307 of I.P.C. deals with offence of “attempt to murder”, which reads thus:

“307. Attempt to murder:- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

Section 307 of I.P.C. consists of two parts. First part deals with attempt to commit murder without causing injury. Second part deals with punishment for causing injury with an intention to cause death. Therefore, the act of the petitioner making an attempt to commit murder of respondent No.3 would fall within first part of Section 307 of I.P.C. Therefore, the contention of the learned counsel for the petitioner that in the absence of any injury on the body of respondent No.3, mere making an attempt would not constitute an offence punishable under Section 307 of I.P.C. is without any substance and such contention is turned down.

The other allegation is that the petitioner threatened to do away with the life of the respondent No.3 in case again he insists to execute registered sale deed. This would constitute an offence punishable under Section 506 of I.P.C. i.e. punishment to criminal intimidation.

Section 503 of I.P.C. deals with criminal intimidation, which is as follows:

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally

bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

The alleged act of the petitioner i.e. threat to kill the respondent No.3 or to do away with the life, if, he again insists for execution of registered document in respect of the property covered by agreement of sale. Therefore, the allegations made in the charge sheet would constitute an offence under the provisions of Penal Code.

The other contention raised by the learned counsel for the petitioner is that a Civil Suit O.S.No.405 of 2014 is pending on the file of III Additional District Judge, Guntur. The said suit is pending between Laavu Srinivasa Rambabu, Gurralla Ramarao (Plaintiffs) and Gunuguntla Purnachandra Rao (Defendant). The Gurralla Ramarao, the respondent No.3 is the plaintiff No.2 in the suit and Gunuguntla Purnachandra Rao, the petitioner herein is the defendant in the said suit.

The said suit was filed for specific performance of agreement of sale dated 13.01.2012 in respect of property mentioned in the schedule annexed to the plaint. No doubt, there is a civil suit is pending. The pendency of civil suit may one of the reasons to commit such act by the petitioner since the motive, though relevant under Section 8 of the Evidence Act, is a double edged weapon, it may be a reason to foist a false case or to commit such offence. Therefore, it is not a substantive piece of evidence and that making an attempt to commit murder during pendency of suit cannot be ruled out.

Viewed from any angle, considering all facts and circumstances of the case including the acts of the petitioner, it is

difficult for this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India to quash the proceedings in S.C.No.113 of 2015 on the file of II ASCJ, Guntur.

Learned Assistant Government Pleader for the State of Andhra Pradesh contended that when an alternative remedy is available under Code of Criminal Procedure, the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

The offence allegedly committed by the petitioner is punishable with imprisonment for ten years and triable by Court of Sessions, the petitioner can invoke the jurisdiction of Sessions Court for discharge by filing appropriate application.

Learned Assistant Government Pleader for the State of Andhra Pradesh contended that in stead of approaching the trial Court the petitioner straight away invoked the jurisdiction of this Court under Article 226 of Constitution of India, on that ground also the petitioner is not entitled for any relief in this petition.

Therefore, I find no ground to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India to quash the proceedings in S.C.No.113 of 2015. Consequently, the petition is liable to be dismissed at the stage of admission.

In the result, the writ petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.11.2017
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