SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.6035, 7291, 8163, 8403, 10535, 10620, 10778, 10840 of 2011 and 3597 and 4892 of 2012 and WP.Nos.31963 and 31964 of 2013

COMMON ORDER:

CRLP Nos.6035, 7291, 8163, 8403, 10535, 10620, 10778,10840 of 2011 and 3597 and 4892 of 2012:

This case has a chequered history commencing with a complaint filed by one Polisetti Lakshmi Naga Sundari against her husband Polisetti Surya Prasad, resulting in cases filed by the parties against each other and filing of cases against police officials by Polisetti Surya Prasad.

CRLP.Nos.6035 and 10840 of 2011 are filed seeking quash of the proceedings in Cr.Nos.60 and 180 of 2011 respectively, against the petitioners, who are A1 to A4, on the file of Station House Officer, Palakol Rural Police Station, West Godavari District and Palakol Town Police Station, West Godavari District respectively. CRLP.Nos.7291 and 10620 of 2011 and CRLP.No.3597 of 2012 are filed seeking quash of the proceedings in CC.Nos.155 and 224 of 2011 and CC.No.51 of 2012, against the petitioners, who are A3 to A10, on the file of the Judicial Magistrate of First Class, Palakol respectively. CRLP.Nos.8163, 8403, 10535 and 10778 of 2011 and CRLP.No.4892 of 2012, are filed by police officials, seeking quash of the proceedings in CC.Nos.155 and 224 of 2011 and CC.No.51 of 2012 respectively, on the file of the Judicial Magistrate of First Class, Palakol respectively.

2. Heard the counsel for the petitioners and the learned Public Prosecutor, appearing for the respondent

3. The marathon of the mutual case filing started with a complaint filed by one Polisetti Lakshmi Naga Sundari, who is the wife of one P. Surya Prasad A1, alleging that he harassed her and beat her. (Surya Prasad and Lakshmi Naga Sundari would be herein after refered as wife and husband respectively.) The husband and the wife got married on 21.05.2003 and they were blessed with one daughter. Based on the complaint, a case in Cr.No.36 of 2011 was registered on the file of the Palakol Rural Police Station. The accused in that case were the husband, his mother, sister and cousin brother and after filing of the said case, the husband was called to the police station by the CI, A.V. Ramana, who figured as an accused in the cases filed by the husband. On being called, the husband went to Palakol Rural Police Station and according to the allegations made by the husband in the complaint given by him, the CI, S.I, A. Chakradhara Rao and a stout constable were present, his wife, father-in-law, mother-in-law and one Tataji were present along with others. The CI asked one Ganesh, Advocate to mediate between the husband and the wife, but the husband declined to settle the issue. Then the CI asked the constable to strip off the clothes of the husband and put him in lock-up. Accordingly, he was put in lock-up. The husband's in-laws took his photographs, when he was without clothes inside the lock up. Thereafter, the husband went to the Court to give complaint and his statement was recorded on 08.07.2011.

In the meantime, a complaint was lodged by the wife of the husband, stating that on 08.07.2011, in the evening, at 7 PM, her husband, along with her in-laws and sister-in-law and her husband,

came in an auto and entered into her house and stabbed her with a knife, in the presence of her mother, on the left hand, while others abetted to kill her. When she made an alarm, the villagers gathered and A1 and others fled away.

Based on the said report, a case in Cr.No.60 of 2011 was registered for the offence under Section 452, 324, 506 read with Section 34 of the Indian Penal Code, which was later altered to Section 307 IPC.

Later, on the representation given by the husband to the Additional DGP, CID, Hyderabad, an enquiry was caused through the Deputy Superintendent of Police, CID, RCIU, Rajahmundry. In the enquiry report, it is stated that the DSP visited Palakol town, along with his staff and examined the husband and recorded his statement, who corroborated all the material facts stated in his petition. He also examined one Mupparthi Sri Chakravarthi Ganesh, Advocate, who stated that in the last week of April 2001, he received a phone call at 9.30 PM from the husband, with a request to come over to the police station; he visited the police station at 10 PM by that time CI, A.V. Ramana, SI, Chakradhar Rao and a stout constable were present. The husband's relatives i.e. his wife, father-in-law, mother-in-law and one Tataji were present. CI asked him to mediate between the husband and his wife. When the husband declined to settle the issue, CI asked the constable to strip off the clothes of the husband and put him in lock up and as such, he was put in lock up. The husband's in-laws took photographs in their cell phone, when he was inside the lock up without clothes. The said incident was reported by him to the Bar

President, Telupula Srinivasa Rao and Bar Secretary, Bera Narasimhamurthy over phone, who asked him to maintain equanimity until morning. Later the husband was released on bail.

Telupula Srinivasa Rao was examined and he stated that in the last week of April, at about 10.45 PM to 11 PM, one Sri Chakravarthy Ganesh and one A.N. Kishore Kumar, came to his house and stated that when the husband voluntarily surrendered before Rural Police Station, Palakol, in a case registered for the offence under Section 498-A filed by his wife, husband's clothes were removed and he was placed in lock up. They requested his action in this matter. He advised them to go and meet the police and make a request again. They left his house and acted as advised. On 10.05.2011 or 15.05.2011, the husband made a representation to the Bar Association for taking necessary action. On 29.06.2011, the Bar Council summoned him for discussion with regard to the petition.

On examination, A.N. Kishore Kumar corroborated the material facts stated by A1 and the Bar President. He later tried to examine the wife of the husband , but they were not available at their house. Again he visited Lankala Koderu village, which lies in Palakol Rural Police Station and on examination of the wife of husband, she stated that she was given in marriage to husband but he continuously harassed her mentally and physically, on which, she preferred a complaint, which was registered as Cr.No.60 of 2011 and A1 was sent to jail. On 08.07.2011, at about 7 PM, her husband, along with her in-laws and sister-in-law and her husband, came in an auto and entered her house and stabbed her with a knife, in the presence of her mother, on the

left hand, while others abetted to kill her. When she made an alarm, the villagers gathered and the husband and others fled away. Based on a complaint given in that connection, a case was registered. Javvadi Krishnaveni, the mother of the wife of the husband, was examined and she also corroborated her daughter's version. The witnesses Dasari Satyanarayana and others were also examined.

On 17.10.2011, he visited the Court of Additional Junior Civil Judge, Palakol town and examined Ms. Deepa Dyva Krupa, Additional Junior Civil Judge. She stated that on 08.07.2011, at about 2.30 PM, which was a Friday, she attended the work of M.C. cases, Private Complaint etc. and on the same day vide S.R.No.4506 of 2011, the husband's sworn statement was recorded as a last matter. He was summoned before the Court at 5.30 PM on 08.07.2011 and it took one hour for her to record the statement, as it has become emotional, since A1 wept by pouring out his woes, while giving the statements. Iit ended at 6.30 PM. She questioned him as to whether there are any other witnesses to be examined. He said that he will bring the witnesses on the next date and the matter was posted to 15.07.2011. The husband's statement was computerized and print out of the same is taken out by B. Srinivasa Rao, typist and the time for doing so, went upto about 6.50 PM and then she got down the bench at about 7.10 PM. Md. Rafullah brought the statement, signed by the husband to her chamber. She signed over the papers and left the court at 7.45 PM. On 27.07.2011, the husband filed a petition against the CI and others vide S.R.No.5066 of 2011 and he raised allegations that he was implicated in a criminal case unjustly because of the offences levelled against him

and he stated at the time of alleged occurrence of the crime he was in court, before Additional Junior Civil Judge, for giving sworn statement. He cited two advocates as witnesses viz. Tadi Anjaneyulu and R.N. Karunakar. On 09.09.2011, she recorded the statements of the husband and R.N. Karunakar and it was taken on file on 23.09.2011 vide CC.No.224 of 2011 under Sections 211, 506 IPC against A1 and A2 and Section 506 IPC against A3 to A5. On second Saturday i.e. on 09.07.2011, she received FIR in Cr.No.60 of 2011 of Palakol Rural Police Station at her house and she got surprised by seeing the time of occurrence in the case i.e. 6.45 PM on 08.07.2011, as, at that time A1 was giving sworn statement before her.

The statement of Kurasam Durgadevi, Junior Assistant, AJFCM Court was recorded and she stated that the husband was summoned to give statement before the Magistrate and while he was giving statement, he became emotional and wept. Hence, they went to see the incident. For that day, the diary was written by her to complete the formalities of recording statement and it took up to 07:20 PM and the Magistrate left the Court at 07:45 PM. Since she was attached to criminal work, she saw the FIR in Cr.No.60 of 2011 and got surprised at the time of occurrence, which was mentioned as 06:45 PM in the FIR, since at that time the alleged accused is in the Court.

Md. Rafullah, B. Srinivas Rao, typist corroborated all material facts stated by the Magistrate and Durga Devi. The statement of Grandhi Mahalakshmi, who is the supervisor in Surya Agri Industries for past two years, is that Balla Srinivasa Rao was working with them for construction of lorry bodies i.e. from 04.07.2011 to 09.07.2011

and he has been engaged in body construction from morning 05:00 AM to 08:30 PM on 08.07.2011, and he came to work at 05:00 AM and worked up to 09:00 PM and for the said period, lunch is also provided. The statement of one Gitta Sree Rama Krishan @ Ramakrishna is that on 08.07.2011, Balla Srinivas Rao went to his duty by the time he opened the shop and the whole day, his wife, mother-in-law and children were in their house and they have not gone anywhere.

From the statement of DSP, it is understood that the husband is a practicing advocate in Palakol court, but he had no work. He harassed his wife and a case was registered against him. When he surrendered, the CI of police misbehaved with him in the presence of Advocate Mupparthi Sri Chakravarthi Ganesh. Since the husband is an advocate by profession, he filed petitions before higher officer and in the court, being aggrieved by the behaviour of CI and with his suggestion, Cr.No.60 of 2011 was registered for the offence under Sections 452, 307, 324, 323, 506 read with 34 and Cr.No.180 of 2011 was registered. Aggrieved by the filing of the cases and high handedness of the CI, the Bar Council of Palakol boycotted the court on 14.07.2011 and for filing false cases against the husband. On 13.07.2011, the Bar Council passed a resolution against unlawful acts of the CI and further resolved to submit representation against the CI to the higher police authorities.

During the enquiry made by DSP, the Magistrate stated that the husband was present before her on 08.07.2011 at 06:45 PM. The staff also stated the same. Hence, he concluded that it is highly impossible that the alleged accused in the case would go to the village and

commit the offence as alleged in this case. He also concluded by stating that the SC & ST case is also engineered by the CI. His enquiry revealed that there is tension between the CI and the advocates and there would be law and order problem.

4. Based on the report submitted by the DSP, the husband filed a case for prosecution of the CI and others and based on the said report, he comes before this Court for quash of the cases registered against him. The report given by the wife of A1 cannot be said to be false, based on the enquiry report, as the enquiry report does not reveal the truth of the case filed by the wife of the husband. Moreover, it is mentioned that "*... it is true that the accused harassed his wife and a case was registered against him ...*"

5. The enquiry report, no doubt, creates strong suspicion against the CI and other accused. The enquiry report shows that the parties have been adopting tactics, which are suitable to their remedies and have been filing cases. The enquiry report can only be a piece of evidence to prove the innocence of the husband in the cases filed against him and to prove the guilt of the accused in the cases filed by the husband. But it cannot be a conclusive piece of evidence of the facts stated therein. Unless a detailed trial is conducted in respect of the alleged offences, it cannot be said that the complaints filed against the husband are false. It is, no doubt, true that the statement of the Magistrate stands on a higher pedestal of truth. Merely because the timings mentioned in the report and the timings at which the husband was present before the Magistrate, are the same, it cannot be concluded that the said report is false. An opportunity need to be given

to the complainant to explain the said improbability. It is also possible that the timing of the offence may not be as accurate as reflected in the complaint given by the complainant. The possibility of the husband going to the house of his wife and trying to attack her has to be assessed with the help of the entire facts that would come forth before the Court, after due interrogation of the witnesses. Moreover the enquiry report reflects that the statement of the wife is that on her raising alarm, neighbours came there and then the husband fled away. Charge sheet is filed, showing some witnesses in the list. Hence, an opportunity, for the court, to get at the truth has to be given. It would be premature to quash the proceedings against the husband, based on the enquiry report, which only reveals *prima facie* probabilities. So also the proceedings against the other petitioners as well as the police officials cannot be quashed for the aforementioned reasons. The parties and the persons concerned with the issues between the husband and his wife, seem to have exhibited extra anxiousness, than was required. Hence, in view of the above, this Court opines that trial of the cases is required and consequently, the above petitions are liable to be dismissed.

The criminal petitions are accordingly dismissed.

WP.Nos.31963 and 31964 of 2013:

6. Since the above criminal petitions are dismissed, the writ petitions cannot be decided, at this stage, as the result of the above proceedings, would be material for deciding the writ petitions.

The writ petitions are accordingly dismissed.

In the result, the criminal petitions and the writ petitions are dismissed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs in the writ petitions.

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T. RAJANI, J

October , 2018
DSK