

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.507 of 2018

ORDER:

The Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners/A1 and A2, seeking to quash the proceedings in FIR No.3 of 2018, dated 07.01.2018 on the file of the Mustabad Police Station, Rajanna Sircilla District.

2. The petitioners, by names, Chintoji Eshwaraiah and Chintoji Manohar are A1 and A2, no other than father and son in the above crime, outcome of the report of the 2nd respondent-Nalla Narsaiah, Sarpanch of Mustabad Grampanchaayat of the alleged occurrence at 10.30 a.m. for the report at 12.00 noon from the police station within the distance of half kilometer, registered for the offences punishable under Sections 3(1)(x)(s) and (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. Sections 3(1)(r) and (s) are in fact substitutions of Section 3(1)(x) of the Act, particularly, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) by the amended Act in 2015. Thereby, both will not survive but for Section 3(1)(r) and (s) if any of the Act thereby, to the extent of registration of crime under Section 3(1)(x) of the Act can be quashed.

4. Now coming to the substance of the accusation in the report of the de facto complainant in registration of crime is stated that he belongs to scheduled caste and is Sarpanch of Village. Some days before undertaking the road widening,

notices were served to the owners of the building, lying on the road side. While so, on 07.01.2018 (Sunday) at about 10.30 a.m there is a village santha and he was standing at the road and A1- Chintoji Eshwaraiah and his son A2-Chintoji Manohar of Mustabad Village came to him saying 'orey madiga lanja koduka, nuvvu madiga sarpanchivi, ninnu madigonivani gelipisthe, aake noticelu pamputava', thereby, abused on caste and insulted him. It is stated that at that time, T.Laxmi Narayana, M.Anandarao @ Nandu, Ch.Mallesh Yadav, B.Srinivas and also others seen and tried to prevent, the accused did not heed. Hence to take action.

5. There is a prima facie accusation to attract the offence under Section 3(1) (r) or (s) of the Act from the face value of the FIR. However, that is not the end of the matter for the Court cannot ignore the attending facts and circumstances and the prior litigation and the motive behind.

6. A perusal of the quash petition averments in impugning the same shows that the registration of crime from the report is out of spite and ill-will, nothing but abuse of process and the alleged abuse touching the caste is untrue, engineered for the purpose of foisting a false case. The petitioners are residents of houses bearing Nos.12-2 and 12-3 abutting main road of Mustabad village leading from Siddipet to Kamareddy and the property consists of mulgies in the ground floor and residential portions in first and second floors and tenants occupied mulgies and the petitioners with families residing in the two floors and

the house is an existence with the shops for the past more than 30 years and they are regularly paying the property tax. The officials of Roads and Buildings as well as Panchayat in contemplation to widen the road beyond 15 feet to the existing on either side, though the road is already 70 feet width and in fact with no need to expand. Having commenced the ground work, asked to cooperate in parting with the properties for the widening purpose to demolish, for which to loose their abutting land, they did not accede in saying if at all they want to acquire, they can proceed according to law and not willing to part with, for, they cannot take law into hands without any proposal to acquire for the said road widening by interfering with their properties. It is, in fact, in the year 2009 itself there was a proposal for widening the same road, the petitioners among others moved W.P.No.10749 of 2009 that was disposed of on 02.06.2009 with directions not to dispossess the petitioners or demolish the properties, without due process of law. It is stated that the 1st petitioner and his wife among others filed W.P.Nos.6051 of 2017 and 9447 of 2017. There was interim order in W.P.No.6051 of 2017 dated 22.02.2017 directing the respondents not to dispossess the petitioners and not to demolish their properties but for according to due process of law and other W.P.No.9447 of 2017 was disposed of on 17.03.2017 with similar directions. The wife of 1st petitioner and others issued notices dated 17.06.2017 stating that the road widening from AMR Garden to crossing of Siddpet, Kamareddy, R&B road is

going to take place and asking to submit the documents regarding permission granted by the Panchayat for the construction within three days. They have submitted accordingly. Again, they were served with notices on 21.07.2017 as if even asked they did not submit in saying their house construction being treated as illegal to demolish to the extent of 50 feet from R&B road centre within 7 days voluntarily to cooperate for its removal, though the houses on existence for past more than 30 years which were constructed with permissions and document submitted and property tax paying and even the building permissions granted were available with Panchayat office itself to verify from the records and they submitted the same to the earlier notice dated 17.06.2017 and as Panchayat was proceeding with widening of the road without acquisition of the properties proposed by demolition. W.P.No.29946 of 2017 filed by the 1st petitioner and his wife as 1st petitioner and 1th petitioner in W.P. and there was an interim order, dated 28.07.2017, directing the respondents not to interfere with the structures on land of the petitioners without following due process and ultimately W.P. disposed of on 12.09.2017 directing the petitioners' to submit their title deeds to the Grampanchayat to be considered and not to interfere without following due process of law and they have complied with the same. While so, suddenly on 06.01.2018, the de facto complainant accompanied by some of the members of the Grampanchayat as henchmen

visited the house of the petitioners at 1.00 p.m. and started causing demolition by using tools. The septic tank, drainage pipe, water pipes were broken and walls of the houses were damaged by using tools. The inmates of the house particularly womenfolk subjected to panic. The 1st petitioner met 2nd respondent on next day in order to ask the legality of their action on 06.01.2018 and the 2nd respondent provoked and assaulted him with slippers and created a scene as if 1st petitioner abused him by touching his caste by giving false report and de facto complainant's supporters also hurled abuses at the 1st petitioner and threatened with dire consequences. The 1st petitioner filed complaints with the Deputy Superintendent of Police, District Collector and also District Panchayat Officer on 08.01.2018 of which there was no action, even 2nd respondent along with supporters and henchmen on 06.01.2018 proceeded to cause demolition of the house of petitioners and threatened the inmates by taking law into their hands. The 1st petitioner's wife, in whose name the house property stands in D.Nos.12-2 and 12-3 and interim order was granted in I.A. directing the Grampanchayat, Sarpanch and his management not to interfere with the property of the petitioner. Bore grudge against the petitioners, the 2nd respondent approached the police with false report on 07.01.2018 referred supra as if petitioners abused touching the caste. The 1st petitioner is a goldsmith by profession and the 2nd petitioner is a Doctor, working in Andhra Mahila Sabha Hospital,

Hyderabad and he is a law abiding citizen and it is a false case filed to harass them.

7. In support of the contentions in the quash petition besides the orders in the writ petitions referred supra, the copy of the report given to the Deputy Panchayat Officer, Rajahmundry, District Deputy Administrative Officer and Superintendent of Police of the District given and the Deputy Panchayat Officer issued an acknowledgement about the receipt of the report referring the Mustabad Village Sarpanch and his followers with ward members came and attacked and damaged their houses and sought to take action. The report given shows on 06.01.2018, the attack was made and property damaged and on 07.01.2018, when Sarpanch was proceeding towards their house, A1 simply asked how far justified in the previous day causing damage to their property and family members, for which Sarpanch and his followers Sarvar Pasha, K.Shankar. etc, slapped them with their chappals and threatened and by suppressing the same, foisted a false case.

8. The show cause notice issued by the Secretary of the Panchayat to the 1st petitioner's wife, dated 12.09.2017, which is part of the material papers shows as per the Grampanchayat records, construction permission was granted in 2003 to construct RCC building in the place of old house bearing No.12-2 and 12-3 and said permission granted by the then Sarpanch as per sanction permission and approved plan and the construction had to be made accordingly but said construction with

deviations to the approved plan and thereby, within 7 days show cause notice why not to demolish and hence demolished and the explanation on 15.09.2017 acknowledged by the office of the Panchayat from wife of A1 shows the house bearing Nos.12-2 and 12-3 are in the place of old house bearing No.7-5 was constructed after obtaining sanctioned plan in the year 2009 and the earlier house bearing No.7-5 was constructed with approved plan and permission on 09.01.1987 itself and there are no deviations in the construction including two mulgies in question. Thereafter, the subsequent construction made in 2009 with stilt floor is a residential of the mulgie in the ground floor with no projections with no open area and the entire property given the numbers 12-2 and 12-3 and paying taxes for the property in existence for the past three decades from the original house plan of 1987 and notice is vague and contents are not true and because of W.P.No.24946 of 2017 filed, the notice is given to create a cause if possible. Hence, to withdraw rather proceed with vindictive measure for no deviations.

9. The above factual matrix *prima facie* shows that the outcome of the report is with some spite and ill-will. There is nothing to say even the litigation is going on from the writ petition, right from the year 2009. Even, there was any abuse by A1 or his wife or any family members or others of the Sarpanch present or the past and there is no meaning in believing all of sudden A1 abused much less by roping A2 also, who is a Doctor working in Hyderabad allegedly on selecting the day, Sunday.

However, from the submission of the learned Public Prosecutor for the 2nd respondent even served failed to attend from the track record, the investigation is in progress and the officer is designated to conduct fair investigation.

10. With the above observations, without prejudice to the defence of the petitioners and the further investigation, the Criminal Petition is disposed of directing the police to complete the investigation and file final report and not to arrest any of the petitioners pending investigation.

11. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.12.2018
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