

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.7589 of 2011

ORDER:

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in C.C. No.92 of 2011, pending on the file of the learned Additional Judicial Magistrate of First Class at Bobbili, Vizianagaram District.

2. It is the contention of the petitioner that respondent No.1 filed false complaint stating that the petitioner-accused herein did not return documents in spite of closure of the loan account and the complainant was made to roam around the branch for return of the documents. The petitioner harassed the complainant and collected more amount than the actual amount payable under compromise. Further, on 26-1-2011 at about 6.00pm, petitioner trespassed into the house of the complainant at about 6.00pm and threatened him with dire consequences and abused family members of the complainant. The Trial Court did not examine the reasons for the delay in lodging complaint and did not choose to forward the complaint to the police and simply taken cognizance.

3. Per contra, the respondent No.1-complainant contended that by the date of death of Rama Swamy on 13.5.2006, the balance of Rs.6,963/- was lying with Abhaya Gold A/c. No.ABG559. The petitioner did not grant any monetary benefits

and cash balance to complainant after the demise of his father. There is a specific allegation in the complaint that on 22.10.2009, Pogiri Krishna Rao (who was also sanctioned loan) was extended the benefit of one time settlement. When the complainant approached the petitioner on 23.4.2010, at bank premises, Bobbili with documents, petitioner asked him to produce "Abhaya Gold Pass Book" of his deceased father. When the same was produced by the complainant, petitioner torned the pass book.

4. It is further alleged in the complaint that on 26-1-2011 at about 6.00pm, the petitioner tress passed into the house of the complainant and threatened him not to launch any civil or criminal prosecution against him. Prima facie, there is a material to prosecute the petitioner under section 197 of Cr.P.C.

5. Now, the point that arises for determination is:

Whether there is any prima facie material to prosecute the petitioner?

6. A perusal of the record would go to suggest that the respondent No.1 filed complaint in C.C. No.92 of 2011 alleging that the father of complainant Rama Swamy availed loan of Rs.1,50,000/- with loan account No.HLPS.2002.0024, facility term loan which was sanctioned on 11.7.2002. At the time of sanction of loan, Rama Swamy deposited sale deed of the house property with the bank. On the advise of bank, Rama Swamy

also opened "Abhaya Gold Saving Account" for risk coverage and security.

7. Further, Rama Swamy died intestate on 13-5-2006 with balance of Rs.6,963/- lying with Abhaya Gold A/c.No.ABG559. While so, on 22-10-2009 and also on 16-11-2009, the petitioner issued letter to the complainant intimating him about the total amount due by him towards the above loan is of Rs.84,851/- and asked to settle the matter under one time settlement on or before 17-11-2009. To this, the complainant issued reply letter dated:11-11-2009 expressing his willingness to settle the matter. The account of Pogiri Krishna Rao, who also availed facility term loan was settled under one time settlement giving benefit at the rate of 50% deduction from his dues. Whereas, the complainant is concerned, he was asked to pay the entire amount as that was secured and refused to extend the benefit as was extended to Pogiri Krishna Rao. Before mediation in the Andhra bank premises, Parvathipuram branch on 27-1-2010, the complainant along with elder stated that the original borrower died and no benefit under "Abhaya God Scheme" was extended to the complainant and further requested to extend the benefit as in the case of Pogiri Krishna Rao. However, the petitioner refused to do so and stated that he has to forego the claim to the tune of Rs.75,000/- instead of total amount due of Rs.84,541/-. The petitioner also agreed to adjust the balance amount of Rs.6,993/- lying in the name of the deceased father of complainant and as such the complainant was asked to pay

Rs.68,000/- towards compromise under one time scheme. Accordingly, complainant paid an amount of Rs.68,000/- on 11.3.2010 to the bank.

8. It is further alleged in the complaint that the complainant roamed around the bank and requested the petitioner to return the documents lying with bank. But the documents were not returned to him. On 23.4.2010, the complainant approached the petitioner's Office-Bank for return of the documents . Then the petitioner asked him to produce Abhaya Gold Pass Book of his deceased father. Accordingly, the complainant produced the same. There is a specific allegation that the petitioner high handedly torned the said pass book and threatened the complainant that unless he pay an amount of Rs.7,000/-, petitioner will not return the documents. So, complainant paid Rs.7,000/- under the shadow of threat and coerce circumstances created by the petitioner. Thereafter, the petitioner issued receipt dated:23.4.2010 with an endorsement stating that "Full payment HLPS.00503029002371 of D. Rama Swamy on account of one time settlement. While the matter stood thus, there is another specific allegation that on 26-1-2011 at 6.00pm, petitioner trespassed into the house of complainant and threatened him not to launch any civil or criminal prosecution against him. Petitioner further threatened that if he reports the matter ie., about latches committed by the petitioner to anybody, he would hire goondas and rowdies over the complainant and will cut tongue of complainant with a knife.

9. That, with regard to 197 Cr.P.C – Protection given under section 197, is to protect responsible public servant against the institutions of possible vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. Such act has to be reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable act. A complete reading of 197 Cr.P.C go to suggest that sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith and the same is not necessary when the offence complained of has nothing to do with discharge of his duty.

10. The petitioner, admittedly, requested the complainant to approach the Branch Manager, Andhra Bank, for clearing the loan amount. It is also clear that whatever he suggested the complainant is according to guidelines and rules of the bank. There is nothing wrong in settling the matter of one P. Krishna Rao, as per the bank norms. Further, there is nothing wrong in requesting the respondent-complainant to produce the “Abhaya Gold Pass Book” of his deceased father-Rama Swamy to give effect and adjust the amount to the loan account. More so, as per the material available on record, the documents, as requested were already returned to the other legal heirs of Rama Swamy on 30.7.2011. The complaint was filed on 27.1.2011 earlier to the return of documents and more so an amount of

Rs.68,000/- as demanded and requested was paid to the bank on 11.3.2010, there is no loss. The Trial Court without observing the mandatory provisions under section 197 of Code of Criminal Procedure taken cognizance of the alleged offence. Sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty. Such mandatory provision is overlooked by the Trial Court and taken cognizance of the matter and so, the complaint is bad. Consequently, the proceedings in C.C. No.92 of 2011 are liable to be quashed.

Therefore, proceedings against the petitioner in C.C. No.92 of 2011, on the file of the learned Additional Judicial Magistrate of First Class at Bobbili, Vizianagaram District are quashed.

11. In the result, the Criminal Petition is allowed.

Miscellaneous Petitions, if any, pending in this Petition, shall stand closed.

JUSTICE N. BALAYOGI

Dated:20-2-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



CRIMINAL PETITION No.7589 of 2011

Dated:20-02-2018

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