HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.8311 of 2013

ORDER:

The petitioner/A.1 seeks to quash the proceedings against him in C.C.No.955/2012 on the file of II Additional Judicial Magistrate of First Class, Eluru, West Godavari District.

2) The factual matrix of the case is thus:

a) LW.1 is the *defacto* complainant and he has been working as Revenue Inspector-II at Tahsildar office, Eluru since two years prior to the complaint. LW.2 is his brother-in-law and stays with him. LW.3 is the friend of LW.1 and LW.4 is the Tahsildar of Eluru. A.1 earlier worked as Senior Assistant in Tahsildar office, Eluru for five years and later he was transferred to Nallajarla Mandal office and working as Revenue Inspector. A.3 is the Ward member of Venkatapuram Panchayat, Eluru. A.1 to A.4 are friends. While-so, LW.1 was not doing the works of A.3 as per his directions. During the tenure of A.1 at Eluru, the works of A.3 were processed by him and after his transfer, LW.1 was not budging to the dictates of A.3. Therefore, A.1 to A.4 conspired to see that LW.1 was shifted from his seat. Once A.3 by phone informed LW.2 that LW.1 was not doing their works and he would see how LW.1 would work in that seat without heeding to his words. LW.2 informed this fact to LW.1. On that LW.1 appraised the said fact to LW.4—the Tahsildar, for which, LW.4 advised him not to care those words and discharge his duties properly. Therefore, LW.1 did not care for the threats of A.3.

b) As the matter stood thus, on 12.07.2012 at 4:00pm, A.3 telephoned to cell phone of LW.2 from cell phone No.9989645382 and threatened that a file was moving at Hyderabad against LW.1 and if LW.1 would come and speak with him, he would settle the issue, otherwise LW.1 may land in trouble. Likewise on 13.07.2012 at about 7AM and 4PM, A.3 again telephoned to LW.2 through cell Phone No.9666352999 and again threatened LW.1. LW.2 informed the said fact to LW.1 but he did not care for it. Later, on that day at about 8PM, an unknown person phoned to the cell phone of LW.2 from the Phone No.08812-221925 and informed that ACB police kept watch on LW.1 and asked LW.2 to inform LW.1 to call him after he returns home. LW.2 conveyed the said message to LW.1 after returning home. In the meanwhile, the said unknown person again called to the cell phone of LW.2 from the cell phone No.8019723720 and at that time LW.1 spoke to the said unknown person. That person informed LW.1 that ACB police kept watch on him and concerned officers came to Eluru. So saying, said unknown person asked LW.1 to meet the concerned officers at Jabilli lodge in the evening of 14.07.2012 and pay Rs.1,00,000/- to the said officer so as to escape from the ACB trap, otherwise he would be booked in ACB case. The said unknown person informed that he too belongs to the ACB department. Then LW.1 lodged a report with SHO, Eluru I Town PS, expressing his doubt against A.1 and A.3. The said complaint was registered as Crime No.149/2012. During the course of investigation, on receipt of phone call to LW.2 from the accused, the Sub-Inspector of Police has arrested A.2 on 14.07.2012 at 6 PM near Hai Tea centre, Canal Road, Eluru in the presence of LWs.7 and 8—the mediators. At the time of arrest A.2 admitted his guilt. LW.9 seized one Karbonn cell phone with IMEI No.911134602382934 which contained Tata Docomo SIM Card No.89910251110114380873 and Uninor SIM Card bearing No.89918191032022109622 from A.2 which was used in the commission of offence. Basing on the confession of A.3, the S.I of Police arrested A.1, A.3 and A.4 on 14.07.2012 at 7:30PM at Jabilli Dormitory, Canal Road, Eluru in the presence of LWs.7 and 8—the mediators. At the time of arrest A.1, A.3 and A.4 admitted their guilt in the presence of mediators. The Inspector seized Nokia cell phone with IMEI No. 0581261354865/04/042679 with Idea SIM card No.8991070130058459 from A.1; a black colour Karbonn cell phone with IMEI No.910546703169319 which contained Tata Docomo SIM Card bearing No.899102511101281572 and an Idea SIM Card No. 89919704900001399520 from A.3 which were used in the commission of offence. On completion of investigation, police filed charge sheet against A.1 to A.4 for the offences under Sections 384, 419 r/w 506 IPC, which was taken cognizance by learned II Additional Judicial Magistrate of First Class, Eluru as C.C.No.955 of 2012.

Hence the instant quash petition.

3) Heard both sides.

4) Denying the allegations, learned counsel for petitioner would strenuously argue that even if the charge sheet allegations are taken to be true, except the baseless apprehension of the complainant, there is no iota

of material to sustain the charge against petitioner/A.1. It is submitted that the petitioner requested the Collector and the RDO to transfer him to the Tahsildar office, Eluru as Senior Assistant and the District Minister has also requested the officer for his posting at Tahsildar office at Eluru. However, the RDO has issued the transfer order posting him at Tahsildar office, Nallajarla Mandal without any power or jurisdiction and insisted the petitioner to join in the said place. Upon which, the Minister also expressed unhappiness and requested RDO to cancel the above said posting but the RDO instead of considering the request of the petitioner, bore grudge against him and got filed the above false complaint through the complainant with an intention to harass the petitioner and to initiate disciplinary proceedings against the petitioner by placing him under suspension. The Project Director of APMIP was appointed as Enquiry Officer, who enquired into the allegations leveled against the petitioner. During the said enquiry, Sri Koruballi Bheema Rao (LW.6) gave his statement stating that the petitioner/A.1 has not visited the Jabilli Dormitory either on 13.07.2012 or 14.07.2012 and police have not arrested him there. Hence the Project Director gave a finding that A.1 did not go to the Dormitory of LW.6 and held that the charge against him was not proved. Learned counsel would argue that in view of the categorical finding of the Enquiry Officer holding that the petitioner/A.1 has nothing to do with the alleged offences, the charge sheet filed by the police is not sustainable. Learned counsel thus argued that continuation of proceedings would amount to abuse of process of court and sought for quashment.

5) Learned Additional Public Prosecutor opposed the petition stating hat the disciplinary enquiry and criminal case are two parallel proceedings and they are dealt with by following different methodology and finding in one proceeding has no binding force on the other.

6) The point for determination is:

"Whether there are merits in this petition to allow?"

7) **POINT**: In the light of above respective submissions, I gave my anxious consideration to the material on record. In the decision reported in ***State of Haryana and others v. Ch. Bhajan Lal and others***[1], Hon'ble Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C. to quash the proceedings to prevent abuse of process of the Court. They are:

> *"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
>
> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

[1] AIR 1992 SC 604

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The present case has to be tested on the anvil of the guidelines rendered by the Apex Court to know whether there exists a *prima facie* case against the petitioner even if the complaint and charge sheet allegations are accepted to be true.

8) The prosecution case is that previously petitioner/A.1 worked in the Tahsildar office, Eluru and he used to process the works of A.3 and A.4, who were engaged in the real estate business. Besides, A.3 is a Ward Member of Venkatapuram Panchayat. After working for a considerable period in Tahsildar office, Eluru, A.1 was transferred to Tahsildar office, Nallajarla Mandal and LW.1—the *defacto* complainant

was posted as Revenue Inspector-II. He was not heeding to the dictates of A.3 which became an eyesore for A.1 to A.4 and therefore, they hatched a plan to see that somehow LW.1 was shifted from that seat with the hope that A.1 might again be posted in that seat. A.3 gave threatening calls once or twice to LW.1 but LW.1 on the advice of LW.4—Tahsildar, did not care for such threats and was minding his work. Then, it is the case of prosecution that A.1 to A.4 hatched a plan, pursuant to which, A.2 pretending himself as an ACB officer telephoned to LW.1 and informed that ACB sleuths were after LW.1 and they were staying in Jabilli dormitory, Eluru and asked LW.1 to meet them on 14.07.2012 and pay Rs.1,00,000/- so as to escape from being trapped in a false case. On that LW.1 gave report to police. Again on 14.07.2012, when A.2 telephoned to LW.1, the police have caught him at a telephone coin box situated near Hai tea centre, Canal Road, Eluru and seized from him the cell phone and on his confession, they went to Jabilli dormitory situated near Canal Road and arrested A.1, A.3 and A.4 and they allegedly admitted their guilt.

9) A copy of the mediator report dated 14.07.2012 said to have been drafted at Jabilli dormitory where the police claimed to have arrested A.1, A.3 and A.4 would show that the police have seized from A.1 silver colour Nokia cell phone with IMEI No.0581261354865/04/042679 with Idea SIM bearing No.8991070130058459 and A.1 allegedly admitted that he used the said cell phone to converse with A.2 and A.3. Similarly, the police claimed to have seized from A.3, a black colour Karbonn cell

phone with IMEI No.910546703169319 which contained Tata Docomo SIM card No.8991025111012181572 and Idea SIM Card bearing No.8991970490001399520.

10) So a plain reading of the FIR, charge sheet and other material if uncontroverted, disclose a strong *prima facie* material against A.1. It is true that petitioner/A.1 produced a copy of the proceedings of the departmental enquiry said to have been conducted by the Project Director, APMIP, West Godavari, Eluru, against petitioner/A.1. Article of Charge No.2 relates to petitioner/A.1's involvement in Crime No.149/2012 i.e, the present case. In respect of the said charge, one K.Bheema Rao (LW.6 in the charge sheet) said to have given a statement to the effect that he is the owner of Jabilli Guest House, wherein he runs dormitory with lockers. He further stated that on 13.07.2012 at 2PM, A.2, who was doing real estate business, came to their dormitory and obtained a cot. At about 8:30PM one person, who was known to K.Bheema Rao, came to their dormitory and when enquired, he stated that his known people were about to come to the dormitory to obtain beds and the said person sat at the counter and at that time two persons said to be known to that person, came there and they cell phoned to A.2. In the meanwhile, Sub-Inspector of I Town PS came along with his staff and arrested A.2 on the ground that he was harassing the Government employees pretending himself to be an ACB officer. The police prepared a report, on which K.Bheema Rao signed but without knowing the contents therein. The said Bheema Rao further stated that either on 13.07.2012 or

14.07.2012 A.1, A.3 and A.4 did not come to his dormitory and the police did not arrest them. No doubt his statement goes against the claim of I.O that he arrested A.1, A.3 and A.4 at Jabilli dormitory on 14.07.2012 on the confession of A.2. Basing on his evidence, it appears, the Enquiry Officer discharged A.1 from charge No.2. Be that it may, the departmental enquiry and criminal case are two different proceedings. The preponderance of probabilities will be considered in the departmental enquiry whereas in criminal case guilt is required to be proved to the hilt. The findings in one proceeding have no binding force on the other though they relate to the same issue. In the instant case, K.Bheema Rao is also a witness in criminal case and it is not known what he is going to depose. Even otherwise the I.O claims to have seized certain cell phones from the possession of A.1 and A.3 after arresting them at Jabilli dormitory on 14.07.2012 in the presence of mediators. So the responsibility lies with the prosecution to establish its case by examining not only K. Bheema Rao but the other connected witnesses. So at this moment the criminal case against petitioner/A.1 wherein there exists *prima facie* case, cannot be quashed solely basing on the finding in the departmental enquiry and it cannot be said at this moment that the continuation of criminal proceedings against A.1 would amount to abuse of process of the Court. In the considered view of this Court, petitioner/A.1 shall face trial along with other accused and vindicate his defence.

11) In the result, this Criminal Petition is dismissed and the Trial Court is directed to decide the case on merits without being influenced by the observations made in this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 24.10.2018
scs