

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1805 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.653 of 2017 on the file of the II Additional Judicial First Class Magistrate, Rajamahendravaram, registered for the offences punishable under Sections 448, 354, 384, 511, 506 read with 34 of Indian Penal Code (for short "I.P.C.").

The petitioner herein is the sole accused and the respondent No.2 is the defacto complainant. The defacto complainant lodged written report with the police dated 24.08.2017 alleging that on 23.08.2017 at 07.00 p.m. while she was talking with her manager Sri G.V.V.Prasad about proposed construction of hospital in D.No.46-12-14 at Danavaipet, the petitioner came there and asked/demanded to stop the building construction work and highhandedly entered into the partly constructed building while claiming that he is the owner of the same, thereupon she requested him to get the matter decided in Court and not to stop the work. Then the petitioner became serious and abused the defacto complainant in filthy language. While the petitioner taking photographs of construction of building, defacto complainant objected him from taking photos, thereupon he placed his hand on her chest and pushed her. In the incident, her saree was loosened and she received injuries, but the petitioner took photographs despite the objection raised by the manager of the defacto complainant and the defacto complainant and beat the Manager also. While leaving the scene of offence, the accused demanded

Rs.20,00,000/- to allow her to complete the construction, otherwise he would pull them to market and to see that they cannot raise their head in the public.

Basing on the said report, police registered a case in Crime No.340 of 2017 and issued F.I.R., took up investigation, examined as many as 7 witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the strength of evidence collected during investigation, S.I. police filed charge sheet before the Magistrate for the offences punishable under Sections 448, 354, 384, 511, 506 read with 34 of I.P.C.

The specific allegations made in the charge sheet are as follows:

“On 23.08.2017 at about 7.00 pm, while the complainant along with LW-4 and LW-5 present at D.No.46-12-14, the new under construction building which is situated at Danavaipet, Rajamahendravaram, which is far away from the residential address of the accused, the accused Achanta Venkata Ramana Murthy intentionally trespassed into the D.No.46-12-14, Danavaipet, and tried to stop the construction work by uttering that the site belongs to him. As such LW-1/Complainant asked the accused to look after the matter in the Hon’ble Court and requested him not to cause any inconvenience to their construction work. Irked by it, the accused used abusive language against the complainant by uttering that “Nuvventha Nee bratukentha lanja” and tried to take the photos of the under construction building. Meanwhile the complainant tried to obstruct him and thereby the accused pushed down the complainant by laying his hands on her chest. As a result of it, she fell down and Saree was loosened and sustained contusion injuries on her body. By the sudden occurrence of the incident, LW-4 tried to stop the accused, who in turn manhandled LW-4. Thereby the accused demanded LW-1 to give Rs.20 lakhs amount for not to cause any inconvenience to the under construction building and also uttered that the accused knows how to extract the money from the complainant family and he has more political power and will perish the social status of the complainant. LW-6,

LW-7 who are the witnesses learnt the offence and rushed the scene and witnessed the over act of the accused.”

The present petition is filed on the ground that the petitioner filed O.S.No.457 of 2014 on the file of the I Additional Junior Civil Judge, Rajahmundry for permanent injunction restraining the defendants therein (defacto complainant), their men, agents and successors in interest from further demolishing the joint wall more particularly shown in Red colour in the plaint plan and to grant permanent injunction restraining the defendants, their men, agents and successors in interest from interfering with the peaceful possession and enjoyment of schedule property in any manner while claiming title to the suit schedule property. When the Civil Suit is pending, the question of petitioner's trespassing into the property bearing No.46-12-14, Danavaipeta does not arise and that the alleged incident never took place and the defacto complainant foisted a false case due to pendency of civil suit and requested this Court to quash the proceedings by exercising power under Section 482 of Cr.P.C.

Sri Gade Venkateswara Rao, learned counsel for the petitioner, reiterated the grounds urged in the petition while drawing the attention of this Court to the copy of the plaint in O.S.No.457 of 2014 on the file of I Additional Junior Civil Judge, Rajahmundry to contend that the complaint was lodged only with a view to wreck vengeance on account of pendency of civil suit and prayed to quash the proceedings.

Sri Kadiyam Neelakanteswara Rao, learned counsel for the respondent No.2, contended that the ground raised in the petition is purely disputed question of fact, that cannot be decided in the

present petition and requested this Court to pass appropriate orders.

As seen from the allegations in the complaint and charge sheet narrated above, the respondent No.2 is the owner and when she was in the house bearing No.46-12-14 and discussing with her Manager about the proposed construction of hospital, the petitioner allegedly trespassed into the house and abused her in filthy language and also pushed her placing his hand on her chest and caused injuries on the body of the defacto complainant, respondent No.2 herein and on the body of the manager of the defacto complainant.

Based on the statements recorded under Section 161 (3) of Cr.P.C. during investigation, police filed charge sheet. But for one reason or the other, learned counsel for the petitioner conveniently avoided to bring the entire material on record, but contended that there was absolutely no material to conclude that the petitioner herein committed offence.

It is undisputed fact that the evidence collected during investigation including the statements recorded under Section 161 (3) of Cr.P.C. are part and parcel of charge sheet. Therefore, unless the statements and other material collected during investigation are placed on record, it is difficult to accept the contention of the learned counsel for the petitioner.

Yet another contention raised by the learned counsel for the petitioner is that due to pendency of the civil suit, the complaint is lodged with the police and the present case is filed to wreck vengeance against the petitioner. Undisputedly, O.S.No.457 of

2014 is pending on the file of I Additional Junior Civil Judge, Rajahmundry. The said O.S.No.457 of 2014 is filed for perpetual injunction and the suit schedule property is house bearing D.No.74-6-49, situated in Prakash Nagar, Rajahmundry within four boundaries described in the schedule annexed to the plaint.

In the written statement filed by the respondent No.2 – Dr. Palivela Hari Nath, husband of the defacto complainant contended that the defendant No.1 was the absolute owner of the house property bearing D.No.74-6-48, which is situated towards east of the plaint schedule property and the same was purchased by respondent No.1 therein from the father of the plaintiff through registered sale deed dated 11.10.1979 vide Document No.5042 of 2979, since then the respondent No.1 therein alone is in possession and enjoyment of property. Thus, the defendant Nos.1 and 2 in the said suit claimed exclusive right over the property bearing D.No.74-6-48, whereas the petitioner as plaintiff in the said suit is claiming right only in suit schedule property bearing D.No.74-6-49, which is adjacent property of the husband of the respondent No.2 herein at Danavaipeta. Therefore, the petitioner and the husband of the respondent No.2 are the owners of the different property as per the material placed before this Court, hence, at this stage, it is difficult to accept that merely because a civil suit is pending, the complaint is filed with malafide intention to wreck vengeance based on the plaint copy filed along with the petition. That may be one of the reasons for commission of offence or foisting a false case since motive is double edged weapon, it can be used for either purpose. On this ground, the proceedings cannot be quashed.

In any view of the matter, in the absence of statements recorded under Section 161 (3) of Cr.P.C. and the other evidence collected by the investigating agency, I am afraid to quash the proceedings at this stage. Hence, I find no ground to quash the proceedings. Consequently, the petition is liable to be dismissed.

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

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

26.07.2018
Ksp

