

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.8300 of 2011

ORDER:

This Criminal Petition is filed by the petitioners-accused Nos.1 to 3 under section 482 of Cr.P.C., seeking to quash the FIR No.298 of 2011, dated:04-09-2011 on the file of the X Metropolitan Magistrate at Malkajgiri, Cyberabad, for the offences under sections 448 and 354 r/w 34 IPC.

2. The contention of the petitioners-accused Nos.1 to 3 is that the alleged incident that occurred on 3.9.2011 at 9.00 hours is totally false and baseless and concocted for the purpose of registering the FIR, one after another, only to harass the petitioners, as the petitioners are not coming for compromise in civil case which are pending since 2008. As the defacto-complainant is unsuccessful in civil case ie., in O.S.No.73 of 2008 which was filed by the wife of petitioner No.1 which was decreed on 26.7.2010 in O.S.No.73 of 2008 and O.S.No.78 of 2008, declaring the wife of petitioner No.1 as absolute owner of the suit schedule property and the Suit in O.S. No.78 of 2008 filed by the defacto complainant was dismissed.

3. It is the further contention of the petitioners-accused Nos.1 to 3 that the respondent No.2-complainant with an ulterior motive to take revenge against the petitioners, concocted a false story and lodged false complaint on 8.8.2009 with the Police, Keesara, stating that on 10.7.2009 at 8.00'O clock in the night, petitioner No.1 and his wife Swaroopa and three others entered the house in which she is

staying and abused in filthy language and with a fear when she tried to come out from the house, they restrained and confined her, crammed cloth into her mouth, threatened to kill her by pointing the knife if she shouts and taken away 10 tulas of gold and net cash of Rs.10,000/- from her house. Later, they removed the cloth from her mouth, threatened her to strip off her saree to hang with the said saree and insulted her. With regard to the said issue, she went to village elders, but she did not get any justice. Hence, she lodged complaint against the five persons. One month after the alleged incident, the police registered the case in Crime No.160 of 2009 for the offences under sections 448, 342, 506 and 354 IPC making the petitioners as accused Nos.1 to 5 and took up the investigation. The police examined nine witnesses apart from the defacto complainant-respondent No.2 and filed final report by referring the case as false.

4. Aggrieved by it, the respondent No.2 filed Protest Petition in Criminal M.P. No.5779 of 2005 by narrating the same allegations stated in the complaint dated:8.8.2009. The X Metropolitan Magistrate, Cyberabad at Malkajgiri, without application of mind, by recording the statements of the respondent No.2 and another witness, took the cognizance of the case by order dated:29-3-2010 for the offences under sections 448, 342, 506 and 509 IPC by numbering the case as C.C. No.299 of 2010 and issued summons to the petitioners.

5. Per Contra, the learned Public Prosecutor contended that there are specific overt act attributed to the petitioners in the complaint and the Magistrate having applied his mind took cognizance and numbered the same as C.C. No.299/2010. There is no misuse of process of Court or caused any prejudice to the petitioners.

6. The respondent No.2 having received summons, did not appear.

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

Whether there is any prima facie material to prosecute the petitioners for the alleged offences?

8. A perusal of the record go to show that as per the averments in E.P. No.39/2010, the plaintiff – M.Swaroopu-wife of petitioner No.1 is the absolute owner of the suit schedule property having purchased the same from Nukalagudem Bhupal Reddy, who in turn purchased the same from Hemalatha, under the registered sale deed document No.9781/2004, dated:26-11-2004. Hemalatha purchased the same property from S. Narsimha Reddy, under the registered sale deed document No.5011/2002, dated:13.9.2002. Admittedly, pursuant to the sale deed dated:26.11.2004, possession was not delivered. Therefore, wife of petitioner No.1 filed Suit in O.S.No.73 of 2008 which was decreed on 26.7.2010, for a declaration to declare the plaintiff as absolute owner of the suit schedule property purchased under registered document No.4554/2005, dated:21.7.2005. In this Suit, respondent No.2-defendant filed written statement and contended that she is the absolute owner and possessor of the suit schedule property having purchased the same through registered sale deed document No.5011/2002, dated:13.9.2002 from her vendor S. Narsimha Reddy for a valid sale consideration. Subsequently, the defendant constructed two rooms, and a compound in the suit schedule property and she is enjoying the same without any interference. Thereafter, she entered into an agreement of sale with N. Bhupal Reddy, agreeing to purchase open plot belonging to him situated in Survey Nos.201,

and 204 of Keesara Dayara Village for Rs.1,40,000/- and also paid Rs.19,000/- as advance part payment of sale consideration agreeing to repay the balance amount of sale consideration on or before 5.11.2004 for getting registered sale deed in her favour.

The complainant/defendant therein being uneducated believed the version of defendant-Bhupal Reddy and thought that he will execute registered sale deed in respect of open plot belonging to him, in her name. The said defendant-Bhupal Reddy took the remaining sale consideration amount from her. She signed the documents thinking that she purchased the open plot from Bhupal Reddy and put her thumb impression over it. But the said Bhupal Reddy, with mala fide intention and by mis-leading her, got registered her own property in his favour vide sale deed document No.9781/2004. The facts above prima facie go to show that in respect of registered sale deeds in favour of Bhupal Reddy and in favour of Swaroopa-wife of petitioner No.1, possession is always with the respondent No.2 as she was staying there by constructing two rooms over the property.

9. The specific overt acts in the complaint are that, on 3.9.2001 at 21.00 hours while the respondent No.2 is present in her house at Godumakunta Village, petitioners ie., Manchala Pentaiah, Chandraiah and Bhupal Reddy criminally trespassed into the house and Pentaiah caught hold her hand, immediately released her hand from him and by taking chilly powder which was lying adjacent and poured and went outside of the house, one Bhupal Reddy ran away from the house. Respondent No.2 came out side and closed the main door from outside. Pentaiah and Chandraiah were held up in the house. While she was making phone call from outside, Pentaiah and Chandraiah left the house through window by breaking the window iron rods. At that

time, Smt. Swaroopa, wife of Pentaiah came to her house and watched. Hence, she requested the police, Keesara, to investigate and do justice to her. Accordingly, the material on record go to suggest that there are specific overt acts against the petitioners that they have criminally trespassed into the house of the respondent No.2 and assaulted her by abusing her in filthy language.

In the facts and circumstances discussed above, I am of the considered view that the allegations in the complaint clearly show prima facie material and specific overt acts against the petitioners to prosecute them for the alleged offences. There is nothing to suggest that the respondent No.2-defacto complainant abused the process of the Court and any prejudice caused to the petitioners/accused Nos.1 to 3 by the complaint in Crime No.298 of 2011. I do not find any ground to quash the proceedings. Accordingly, the Criminal Petition is dismissed while vacating the interim stay granted on 12-9-2011.

10. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

Dated:06-02-2018

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