

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.4385 of 2018

ORDER:

The petitioner-B.Naseem Bhanu w/o Madarvali, EC Member of Hussainsavali Minority Welfare Rural Development Society (for short, 'the Society') Velugodu mandal, Kurnool district is A.5 among 5 accused of S.C.No.84 of 2016 on the file of the learned Special Court for SC/ ST Cases-cum-VI Additional District Judge Court, Kurnool, which was outcome of the proceedings in PRC No.13 of 2016 on the file of the learned Judl.Magistrate of First Class, Atmakur, from the police final report taken cognizance for the offences punishable under section 420,465,323,355,509 and 506 read with 34 IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989(for short, 'the Act') of Cr.No.65 of 2013 of Veluguodu Police Station from the report of the 2nd respondent/ defacto-complainant Kethavath Thikkamma Bai w/ o K.Nani K Naik of Velugodu.

2. The averments in the quash petition seeking to quash the proceedings against her are that the petitioner-A.5 is nothing to do with the alleged offence, she is innocent and committed no offence and is falsely implicated to harass her, that even from the reading of the complaint and police final report from the investigation statements on face value, there is no whisper or allegation against the petitioner-A.5 and thereby the taking cognizance against the petitioner/ A.5 for any of the offences is liable to be quashed. It is also contended that when there is no allegation to attract any of the offences, continuation of the proceedings is abuse of process for any participation of the petitioner/ A.5 in the alleged incident no where even mentioned by the

complainant as well as any of the witnesses and that was not considered by the Court in taking cognizance.

3. Notice sent to the 2nd respondent/ defacto-complainant returned as refused is sufficient service, thereby taken as heard. The learned counsel for the petitioner reiterated the contentions supra. Also heard the learned Public Prosecutor for the 1st respondent-State in opposing the same saying once the police from registration of the crime filed final report that was taken cognizance by the learned Magistrate and committed the case to the Court of Sessions where from the prima facie case made out allotted Sessions Case number, there are no grounds to quash the proceedings against the petitioner/ A.5 and the remedy of the petitioner/ A.5 if at all is to file a discharge petition to consider from the prosecution material by before the Sessions Court before framing charges on own merits and thereby sought for dismissal. It is also contended that the order dt.28.02.2018 in CrI.P.No.6840 of 2017 insofar as the A.4, no way comes to take shelter under that guise in seeking to quash the proceedings against the petitioner/ A.5.

4. Heard and perused the material on record.

5. The sum and substance of the accusation from the private complainant of the defacto-complainant dt.01.07.2013 referred to police for investigation under Section 156(3) of CrPC in registration of crime supra reads that the complainant and her family are living by grazing cows and cultivating lands on lease at Velugodu and the accused persons also of same village of whom A.1 by name Pittala Abdul Waheed Basha, who is son of A.2-P.Hussain Bee and A.3-P.Mahammad Ibrahim, A.4 is uncle of A.2 and A.5 is their relative and they started the Society and pretended to run B.Ed. college and assured to the defacto-complainant that they were going to give clerk job to the son of the defacto-

complainant and watchman job to her husband and lured her to part with 5lakhs which she paid to A.1 to A.3 by securing from near relative and without providing any such job to the defacto-complainant's son and husband by the A.1 to A.3 having dragged on for 4 years ultimately left the village and because of that even the marriage of the defacto-complainant's daughter was postponed and the accused created a situation for the defacto-complainant to consume pesticide poison to commit suicide. While so, on coming to know that the accused persons- A.1 to A.5 on 02.06.2013 at 10.00 A.M., came to Oxford School at Boyarevula village abutting Velugodu-Nandyala road, the defacto-complainant and their relatives went there and demanded for the amount, for that the A.1 abused her touching caste as 'Sugali Lanjadana, how dare to come there and ask for return of money and said that he will see who will come to her rescue, if he kills her and saying so beat her on her cheek and kicked on her stomach with slippers and further the A.3 also abused her in filthy language and A.2 beat her with legs with slippers and abused touching caste and she can challenge to report the matter to anybody if she can and pulled her sari. Her husband-a physically challenged was shocked for a while and when questioned them, A.1 abused him also by insulting including on his disability as 'Sugali kunti lanja koduka' to see his end and slapped with chappal and pushed him down. In the meantime the persons going there like Somanna and Ramprasad stopped their two wheeler and rescued them and the accused left the place and the defacto-complainant went to the police station, Velugodu and given a report immediately on that day but the police did not choose to take report and enquire and thus the accused deceived the defacto-complainant under the guise of providing jobs to

her son and husband by running a Society with the forged signatures and by collecting amounts, cheated her. Hence to take charge.

6. The crime registered was under Sections 323, 506 and 509 IPC and Section 3(1)(x) of the Act from the private complaint referred to police supra. It is during investigation by examining the defacto-complainant as LW1, her husband K.N.Naik as LW2, one M.Seetammabai as LW3 and one N.Pedda Swamanna as LW4, N.Ramprasad as LW5, B.Nasarullah Khan as LW6 and M.Hussainaiah as LW7 filed final report which shows that the statements of LWs. 1 and 3 recorded with reference to the Society records from the Registrar of Societies, Kurnool, which establishes forgery of signatures of defacto-complainant by the accused and LW3 in the memorandum of the Society. So far as the A.4 concerned the quash petition CrI.P.No.6840 of 2017 was allowed by another Bench of this Court on 28.02.2018 which reads that there is no mention in the chargesheet that the petitioner/A.4 beat the defacto-complainant or anybody and the omnibus allegations against the A.4 no way constitutes any offence under Section 420IPC and even as per the prosecution, A.1 to A.3 taken the amount of 5 lakhs from the defacto-complainant to provide job to son and husband of the defacto-complainant but failed to do so and they went and demanded to repay the amount taken by the A.1 from her, then the A.1 along with other accused threatened by abusing to do what they can. the A.4 is not the person who promised to defacto-complainant to provide job to her husband and son nor shown involved in any offence. Thereby the continuation of the proceedings are nothing but abuse of process.

7. From the material on record, the presence of A.5 not even spoken in FIR but for against the A.1 to A.3, the alleged occurrence abusing touching caste when asked for return of the amount collected by

the A.1 to A.3. Even from the investigation statements of the witnesses supra, there is no any whisper against the petitioner A.5. Even the chargesheet no way shows how the petitioner-A.5 much less A.4 is liable for the alleged offence of cheating or forgery.

8. Having regard to the above, the proceedings against the petitioner-A.5 who stand in the similar footing of the A.4 against whom the proceedings in the crime since quashed as referred supra, cognizance for the offences punishable under Sections 420 and 465 IPC and Sec.3(1)(x) of the Act are liable to be quashed.

9. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in S.C.No.84 of 2016 on the file of the learned Special Court for SC/ ST Cases-cum-VI Additional District Judge Court, Kurnool against the petitioner/A.5 by acquitting her and bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:23.11.2018
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