

HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.9111 of 2017

ORDER:

The petitioners 1 to 6 are the accused 1, 2, 4 to 7 in PRC No.47 of 2016 pending on the file of the Chief Metropolitan Magistrate, Hyderabad to commit the case to the Court of Sessions, having taken cognizance for the offences punishable u/ sec.307 and 506 read with 34 IPC which is outcome of Cr.No.179 of 2015 registered on 21.08.2015 from the report of the 2nd respondent A.Shanti for the alleged attack on 3rd respondent-victim Rameshkumar Yadav by the accused persons 1 to 7 in relation to a dispute with regard to the property particularly of House No.20-1-140 situated at Puranpool, Hussaini Alam, Hyderabad on 20.08.2015 at about 11.00 P.M.

2. The contentions in the petition to quash said PRC proceedings are that the petitioners are innocent and it is a false case foisted against them with allegation of on 20.08.2015 at about 11.00pm, the defacto-complainant while taking dinner in her house, the accused persons with a demand to vacate the house, attacked with iron rod and stone Rameshkumar Yadav, brother-in-law of the defacto-complainant and caused bleeding injury on his forehead and despite herself and her son tried to stop, they were threatened by the accused persons with dire consequences to do away with them if they interfere. Even taken consideration on the face value of the allegations, no offences supra are made out against any of the petitioners of whom A.1 is son of A.3 (not among the quash petitioners), A.2 is son of A.1, A.4 and A.5 are sons of A.6 and A.7 is wife of A.1 and of whom A.3 died on 04.06.2016 and case abated against him, that there are disputes in relation to the property standing in the name of late A.3 between the accused persons and 2nd respondent/ defacto-complainant no other than wife of younger brother of A.1 and A.6 and the disputes were resolved amicably through Memorandum of

Understanding(for short, 'the MOU'), dt.10.08.2016 entered between them and it was agreed to withdraw in the MOU, cases and counter cases between the parties by amicable settlement and all the cases are withdrawn by filing quash petitions and by referring to Lok Adalath for settlement and withdrawal before respective Courts and so far as the present PRC No.47 of 2016 concerned, the respondents 2 and 3 were supposed to file joint memo with a compromise affidavit to close the PRC proceedings for the counter cases for the similar Sections of law registered against the respondents 2 and 3 etc., were quashed in view of the compromise by order of this Court in CrI.P.No.15310 of 2016 dt.02.11.2016. The respondents 2 and 3 however dodged to withdraw the present proceedings against the petitioners contrary to the MOU and thereby the criminal proceedings are liable to be quashed and placed reliance on the expression of the Apex Court in Ruchi Agarwal Vs. Amit Kumar Agarwal¹

3. Counter filed on behalf of the respondents 2 and 3 stating that the quash petition is with false averments and liable to be dismissed. The PRC No.47 of 2016 is not a private complaint case but from police final report after investigation from the attack on 3rd respondent by the accused on 20.08.2015 at 11.00 a.m. supra wherein he received bleeding injuries on his head and the defacto-complainant and her son were threatened when they tried to rescue him and with the help of neighbours the defacto-complainant taken the injured to Osmania General Hospital where while he was under coma from the injury to brain for better treatment shifted to Yashoda Hospital, Malakpeta and a surgery was conducted for the blood clotted in the brain and after long treatment he saved his life otherwise could be succumbed and the petitioners/ A.1,A.2,A.4 to A.7 are involved in 3 to 6 cases. Coming to the Cr.No.189 of 2010 for the offences u/ s.323 and

¹ 2005 3 SCC 299

506 covered by C.C.No.217 of 2015, Cr.No.27 of 2013 u/s.324 r/w 34 IPC covered by C.C.No.421 of 2016 and Cr.No.185 of 2016 u/s.307 r/w 34 IPC of Hussain Alam Police Station and so far as the others are concerned involved in some other crimes viz: 148 of 2009 u/s.146, 147,148 and 324 r/w 149IPC covered by C.C.No.197 of 2012, and Cr.No.236 of 2011 for the offences u/s.324 and 427 r/w 34 IPC in C.C.No.485 of 2012; Cr.No.167 of 2012 for the offence u/sec.160 IPC covered by C.C.No.448 of 2013; and A.2 is involved also in Cr.No.223 of 2010 for the offences punishable u/s.504 and 506 IPC covered by C.C.No.439 of 2014 of Hussaini Alam Police Station.

4. It is admitted about the MOU dt.10.08.2016 entered between the A.1 to A.6 with R.3-victim but others are not the parties to the MOU and A.1 and A.6 did not act according to MOU for not withdrawn all cases pending including Second Appeal Nos.785 and 717 of 2014 pending in the High Court and the A.1 and A.6 did not register their respective portions of House bearing No.20-1-140, even main essence of the MOU is A.1 and A.6 received Rs. 19,36,333/-each from R.3 and his another brother who is already a party to the MOU by name Dayakar Yadav, register their individual portions in the name of the R.3 and his brother but after closure of the cases, the 3rd respondent and his brother Dayakar Yadav among the petitioners, A.1 and A.6 took 'U' turn and not registered their portions and when R.3 issued legal notice dt.05.12.2016 to his counsel stating the MOU dt.10.08.2016 stood terminated and no rights would accrue to R.3 and his brother. Once such is the case, based on the MOU when they are claiming as if cancelled, the accused persons cannot ask for withdrawal of the criminal proceedings or to quash the proceedings by taking 'U' turn to the MOU by not registering and even on merits, there is nothing to quash the proceedings of the grave and heinous crimes of attempt to kill R.3 and sought for dismissal of the quash petition.

5. So far as the injuries sustained by the R.3 concerned, it is head injury and left temporal parietal-EDH with left temporal Lobes SAH, left parietal bone fracture and extra dural heamotoma evacuated and bone flap replaced and craniotomy done.

6. Undisputedly, both the offences u/s.326 or 307 IPC are non compoundable cases. Undisputedly as per the MOU dt.10.08.2016, several cases referred supra are to be withdrawn including the Second Appeal Nos. 785, 786 and 717 of 2014 and it was mentioned that Prabhakar Yadav-A.1, Sudhakar Yadav and another brother Venkatesh Yadav (no other than father of A.4 and A.5) of A.1 as First Party and Ramesh Yadav-the Victim and Dayakar Yadav-husband of the defacto-complainant-smt.Shanti as second party agreed to the MOU to withdraw the criminal cases and the First Party also agreed to sell their respective part in Flat No.20-1-140 in Chandrikapuram, to the Second Party by executing a registered sale deed before the Sub Registrar after receiving of 58 lakhs to be paid within 4 months and also mentioned about appearing before Lok Adalath or High Court for smooth withdrawal of the cases both civil and criminal against each and not to initiate any further civil or criminal cases against each other and also withdrawal of complaints with BSNL Department (Hyderabad, Telephones) and before Bar Counsel of Hyderabad and withdrawal letter to be given by Second Party to Greater Hyderabad Municipal Corporation and the earlier complaint with DGP against Dayakar Yadav also to be withdrawn and First Party shall not interfere when Second Party tries to sell their property H.No.20-1-74 and 75 of Purana Pool, Hyderabad owned and possessed by the Second Party and Second Party shall not interfere with the property H.No.20-1-741 of Purana pool owned by party No.1 of First party including for any new construction by demolition of old one and also shall not be interfered by Second Party into the O.S.No.682 of 2014 pending in

XXIV Addl.Chief Judge, City Civil Court, Hyderabad. Consequently some of the criminal cases were withdrawn. It clearly shows the MOU is acted upon so far as reply notice averments of the First Party, it is also admitted about the terms of MOU,dt.10.08.2016 however stated the amount agreed to be paid was not paid within the time stipulated by 10.12.2016. The 3 second appeals referred in the notice cannot be withdrawn from L.R. petition pending and thereby the MOU stood terminated.

7. Even said contention not tenable for the entire MOU not terminated but for amount not paid pursuant to the terms of MOU within the stipulated time. Then what is the consequence in a civil matter if at all to enforce MOU by showing time not essence from the contractual obligations covered by compromise from MOU, however it does not mean the criminal cases are liable to be kept pending. In fact, the proceedings in C.C.No.485 of 2012 pending before the Chief Metropolitan Magistrate, Nampally, Hyderabad against Prabhakar Yadav-A.1 and his son A.Pramod(A.2) where the defacto-complainant was Ramesh Kumar Yadav(R.3) were quashed referring to the MOU dt.08.10.2016 and similarly C.C.No.630 of 2007 concerned, the CrI.R.C.No.1453 of 2014 also settled in Lok Adalath as per the MOU supra.

8. Once such is the case, the continuation of the proceedings of the non-compoundable offences is nothing but abuse of process having been understood to withdraw several crimes and also several suits and also to enter into agreement for portion of the property etc., referred supra. Though the expression in Ruchi Agarwal supra is in relation to matrimonial dispute; here the case on hand is also a family dispute directly among the family members and once the MOU entered even it is a non-compoundable offence either u/sec.326 or 307 IPC concerned from all other matters amicably settled and many crimes withdrawn or quashed referred supra, it

is the duty of the Court to subserve the ends of justice not to continue the proceedings as continuation tantamounts to abuse of process.

9. Accordingly and in the result, the Criminal Petition is allowed quashing the proceedings in PRC No.47 of 2016 on the file of the Chief Metropolitan Magistrate, Hyderabad, without prejudice to enforce the MOU terms insofar as the Second Appeals contractual obligations to perform by execution of sale deed for the property concerned. The accused are acquitted and their bail bonds shall stand closed.

10. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:23.11.2018
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Dr. JUSTICE B. SIVA SANKARA RAO