

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13313 2016

ORDER:

The petitioners 1 to 3 herein are A1 to A3 in C.C.No.519 of 2013 on the file of the VII Metropolitan Magistrate, Hayathnagar, Cyberabad, taken cognizance for the offences punishable under Sections 341, 323, 427 and 506 r/w 34 IPC from the police final report, outcome of Crime No.688 of 2010 of Hayathnagar Police Station, on the report of the 2nd respondent/de facto complainant, no other than brother of A1, A2 and A3 are the son and wife of A1, dated 25.12.2010, allegedly occurred on that day at about 3.00 p.m reported and registered at about 9 p.m, from the police station at a distance of 20 k.m, which is the registered premises, Shangi of Hayathnagar, and from the investigation, the police filed final report with 12 witnesses including LWs.9 to 12 are the police officials, who registered crime and investigated the case from time to time and LWs.7 and 8 are the so called panch witnesses to the scene observation and besides the de facto complainant(LW1), LW.2 is his brother so also of A1, LW.3 is driver under LW.1, LWs.4 and 5 are Administration Officer and Plantation Manager of Sanghi Textiles, Sanghinagar, LW.6 is personal driver of LW.2, all are eye witnesses to the alleged occurrence.

2. It is, impugning the said cognizance right from registration of the crime from the police final report in summoning the accused, the present quash petition is filed with contentions in the grounds vis-à-vis oral submissions that on face value of the allegations, none of the offences that attract in registration of crime for the alleged cognizable offence, leave about from the police final report to file the charge sheet has to take cognizance from the learned Magistrate, which is outcome of non-application of mind and a perusal of the record indicates that it is outcome of not allegedly prescription of any occurrence truly but with spite and ill-will and from the rivalry and from the disputes between the family members that are pending either before the Company Law Board or the High Court in appeal with remand to Law Board as the case may be right from the beginning of 2010 since prior to the registration of crime and that was lost sight in taking cognizance or in investigation of the case in a proper perspective and the proceedings are liable to be quashed, thereby in acquitting the accused.

3. The factual background mentioned in nutshell in support of the quash petition to the contentions supra is that the 1st petitioner, 2nd respondent and LW.2 are the three among four brothers, who are the Directors with equal share in

M/s.Sanghi Polyesters Limited and other industries and there are disputes arisen between the brothers in respect of those entities and the matters went to the Company Law Board, Chennai, Tamilnadu and M/s.Sanghi Polyesters Limited was wound up and liquidated at the instance of two bankers, which are from the allegations of mis-management and oppression with rival contentions of the 1st petitioner and 2nd respondent and shareholders in the Company Law Board and the Company Law Board therefore disposed of the matter on 08.11.2010 in Company Petition No.1 of 2010 from the undertaking of the de facto complainant to make the plant operational within 30 days there from by its recording from the proposal submitted by him for revival of the plant by its acceptance and in saying de facto complainant along with one Sumanta Kumar Samanta, out of five independent Directors of the Board and the Chairman appointed as Managing Committee to take care of all the aspects in running the plant operations of M/s.Sanghi Polyesters Limited by putting de facto complainant as in-charge of Finance, procurement of raw materials and to look after the bank operations, whereas, Sumanta Kumar Samanta as in-charge of production and marketing and if the independent Directors veto any major decisions in the interest of the company, the de facto

complainant is at liberty to approach again in the Company Law Board and the de facto complainant shall bring a sum of Rs.5 crores to satisfy the immediate fund requirement as an unsecured loan until the company starts generating profits and thereafter move the Bench for getting rate of interest to be fixed. Consequently, the de facto complainant was permitted to open a fresh bank account in Allahabad Bank or Canara Bank in the name of M/s.Sanghi Polyesters Limited to operate the same solely and the new Management Committee supra will clear electricity dues and salary arrears and payments towards raw materials, electricity, wages, statutory payments and any direct fixed cost order and communicate copy of this order passed by the Company Law Board supra to concerned banks with which the company is having transactions. Aggrieved thereby, the 1st petitioner/A1 and 2nd petitioner/A2 filed appeal under Section 10(F) of the Companies Act, 1956 before this Court and by order, dated 15.12.2010, the impugned order of the Company Law Board, dated 08.11.2010, was set aside by allowing appeals and by remanding the matter to the Company Law Board for consideration afresh the proposals made by the rival groups and to render a discussion thereon strictly in terms of directions of this Court in its common judgment, dated

01.10.2010 in Company Appeal Nos.10 and 14 of 2010 with observation that the impugned order of the Company Law Board, dated 08.11.2010, which amounts to superseding and suspending the Board of Directors and transferring the management of the entity to the 2nd respondent/de facto complainant ignoring the factum of the company is a listed company.

4. Coming to the legal proceedings supra, the further contention in the grounds of the quash petition is that by virtue of said order, the management was handed back to petitioners 1 and 2 and 1st petitioner was entitled to manage the affairs of the company and aggrieved by the said appeal order of the High Court, dated 15.12.2010, the de facto complainant/2nd respondent herein filed S.L.P(c).No.1085 of 2011 and the Supreme Court, by order, dated 14.01.2011, confirmed the remand order of the High Court to the Company Law Board. It is, consequent to that the 1st petitioner intended to visit the company on 25.12.2010, he was prevented by the 2nd respondent and was threatened with dire consequences, from which the 1st petitioner lodged FIR in Crime No.687 of 2010 of even date before the Station House Officer, Hayathnagar, which is first in point of time to the present quash proceedings covered by Crime No.688 of 2010

of even date of the de facto complainant/2nd respondent, the police did not properly investigate in both the crimes, though filed charge sheet in both the cases viz. in Crime No.687 of 2010 covered by C.C.No.87 of 2015 and Crime No.688 of 2010 covered by C.C.No.519 of 2013 supra. A petition in Crl.P.No.4716 of 2016 was filed to quash the FIR and charge sheet of Crime No.687 of 2010 filed by the de facto complainant herein as accused therein and the same was allowed on 06.04.2016 mainly with observation of the investigation went for about 3 years with no basis and the present petition proceedings equally thereby liable to be quashed, apart from the false accusation, the allegations are omnibus and baseless and non-cognizable for any offence.

5. The learned counsel for the petitioners reiterated the same by drawing the attention to the material on record in this regard.

6. It is the contention of the counsel for the 2nd respondent-Defacto complainant visavis the learned Public Prosecutor in opposing the petition saying there is a prima facie accusation from the substantial material and merely because the case in Crime No.687 of 2010 covered by C.C.No.87 of 2015 quashed, that itself is not a ground to quash the present C.C.No.519 of 2013 and there are no

grounds to quash the present proceedings but for if at all to putforth the defence before the trial Court by facing trial and there are eye witnesses and prima facie accusation from the investigation material and thereby sought for dismissal of the quash petition.

7. Heard both sides at length and perused the material on record.

8. There is no dispute in relation to the Company Law Board order reversed by the order in Company Appeal Nos.18 and 19 of 2010, dated 15.12.2010, that was not interfered by the Apex Court in SLP(c) No.1085 of 2011, by order, dated 14.01.2011. The occurrence was on 25.11.2010, which is subsequent to the Company Appeal order, dated 15.12.2010 supra.

9. Coming to the substance of the accusation herein from the report of the de facto complainant in setting the law in motion in registration of the crime what is alleged in the report without reference to the factual saying, there were disputes between Sudhir Sangi (A1) on one hand and Ravi Sanghi (de facto complainant), Girish Kumar Sanghi (LW2) on the other hand before the Company Law Board and other Courts and as per the directions of the Company Law Board and High Court of Andhra Pradesh, Sudhir Sanghi(A1) is not

competent to remove stocks in the factory and to disturb day to day activity of the company, he is resorting to illegal and criminal activities contrary to the Court directions and on that date, at about 3.00 p.m, the accused mobilized certain local lumpen and criminal ailments along with certain workers from Sanghi Spinners India Ltd. and SZF Private Ltd. followed by other accused named, fraudulently and illegally trespassed into M/s.Sanghi Polyesters Limited company with an intent to terrorize by carrying lathis, rods, shekels, axels and guns in forcible entry and tried to damage company assets followed by damaging vehicles parked before the gate of factory and also wrecked and damaged the computers, window glasses at the factory premises and even some of the employees resisted, received injuries including from stone pelting by mob. It is further stated that since 10 days, above persons used to come to the factory and threatening the employees with dire consequences and the Chief Security Officer already made a complaint on 19.12.2010 to the Station House Officer, Hayathnagar and on that day, 25.12.2010, the situation was more serious than on previous occasions. The accused also threatened the employees and their family members at quarters and security personnel at plant, administrative block and warehouse by causing physical harm and warned each and

every employee with dire consequences and threatened to vacate quarters and leave the employment. The above accused unlawfully assembled with a common intention and object to terrorize employees and their family members residing in the quarters and to take away the finished goods. Hence to take action. It is also stated that A1, though Managing Director of the company not authorized to disturb the present position as directed by the Courts for resorting to the acts narrated above for criminal trespass, attempt to extortion, rioting and dacoity etc.

10. In the report of the de facto complainant, running in two pages in English neatly typed supra, there is nothing to say anybody wrongfully restrained to invoke Section 341 IPC. Even in the report, there is no mention about anybody received specific injuries at any part of body, if so, by which person. In the report, it is not even stated that the de facto complainant or his brother was attacked or who are the persons specifically witnessed the occurrence including as to presence of LW.2 or his driver, LW.6.

11. In the police final report, none of the workers or employees in the quarters satisfying the FIR allegations supra of any of the accused went to the quarters and threatened the employees or terrorized much less by causing physical harm

equally at the administrative block at plant and warehouse. In the report, at the last para, it is categorically mentioned that A1 is the Managing Director of the company.

12. From the facts supra not in dispute of the litigation before the Company Law Board and High Court which reached upto the Supreme Court. Once the arrangement before the Company Law Board covered by order was set aside referring to earlier Company Appeal common order of the High Court in the Company Appeals supra in directing by remand of the matter for re-determination, the arrangement before the Company Law Board covered by the order, dated 08.11.2010 was no more available, after High Court appeal remand order dated 15.12.2010 in remanding and referring to decide, pursuant to the earlier appeal order, dated 01.10.2010 in Company Appeal Nos.10 and 14 of 2010. Once A1 is the Managing Director of the entity, no other than brother of de facto complainant and LW3, among four brothers, he cannot be called as trespasser. Even from the investigation, there are no any specific injuries caused by any specific accused on any specific persons and as to the nature of the injury mentioned to attract even Section 323 IPC, for which charge sheet filed, though, registered under Section 424 IPC. No doubt, no offence under Section 506 IPC that attracts for

not even a case of any of the persons specifically felt panic and alarm from acts, any of the specific accused, which is a prerequisite otherwise the allegation is nothing but fighting in the air to attract the offence. There remain, if at all attracting of offence under Section 427 IPC to consider besides 323 IPC in addition to what is discussed supra in this regard, coming to the statements of the witnesses examined by the prosecution of LW1 in tune to his report stated and additionally was a new fact as to change of time from 3.00 p.m. to 2.00 p.m. and change of version as if, he was not there but he was at the house at that time taking lunch, which house is located on the backside of the factory premises and he received a phone call from the security personnel of the factory gate of M/s.Sanghi Polyesters Limited saying A1 along with his men came there and he informed the same to his brother LW.2, he also came and de facto complainant along with his wife went there, which are the new versions with developments and also inconsistent with the contents of the report as to the time and as to the persons time and presence of several persons as if witnesses that cannot be missed from notice and appreciation of the facts even in the quash petition. What he further stated is on seeing A1 along with his followers at the gate, he asked A1 to come inside to

speaking, for which he put a condition of all shall come together if at all to permit and when the de facto complainant was speaking to A1, LW2 came there and in the mean time, the accused attacked them and caused injuries to him and his company employees, even he did not mention what injury he received and at which part and with what weapon if any in the hands of which person specifically and also as to which company employee received which injury if any and what is the treatment particulars if at all where treated if sustained injuries, which is also a prerequisite. It is mentioned about Qualis vehicle and jeep belongs to the brother of the de facto complainant, where glasses were damaged and fled away there from and they can identify those persons. No test identification even conducted even as to the same even the statement so speaks, leave it by itself is not a fatal.

13. Coming to LW.2-Girish Kumar Sanghi, brother of A1 and de facto complainant what he stated in relation to the offence is that on 25.02.2010, at the noon time, his brother, LW.1 telephoned to him stating at the gate of M/s.Sanghi Polyesters Limited, A1-Sudhir Sanghi, his wife and son along with followers is creating galata and he came there along with his driver and body guards and he went to LW1 and LW1 asked A1

to come inside, for which he put a condition of all would come together and while so talking by LW.1 to A1, A1 along with his followers attacked them and their employees and caused injuries. As referred supra, in the report, there is no mention about any attack on LW.1 or LW.2 but only saying some employees including from stone pelting by mob received injuries and none of the employees, who received injuries even examined during investigation, even to attract the offence under Section 323 IPC, much less, with any wound certificates and what he stated by LWs.1 and 2 of they also received injuries without specifying which injury he operated and with what treatment at which hospital if at all cannot be believed in the light of the developments to FIR from the statements.

14. Coming to LW.3, driver of LW1 and LW.4, Administrative Officer of M/s.Sanghi Polyesters Limited, LW5, Plantation Manager, LW6, driver of LW.2, their version is entirely different and not consistent with FIR and LWs.1 and 2 statements supra, on material aspects regarding the manner of occurrence but for presence of persons, what they stated is A1 along with employees was trying to enter into the factory premises, LW.1 asked A1 alone to come inside, for which A1 stated, he along with his employees would come and LW.1

objected for him and there was a galata and both sides attacked each other with sticks and in that attack, some vehicles also damaged. The damage to the time of his break open glass, planks or computers but for in FIR not stated by LWs.3 to 6 supra, what LW.5 stated is he received a minor small injury along with two others and in their company hospital, they have been treated and that hospital now not available. That is a new fact not even stated by anybody. There is no even any wound certificate filed by the investigating officer by examining the doctor if at all examined, though it is a material aspect and from the statements of LWs.3 to 6 supra it shows in the mob attack, one against other with sticks etc. or pelting stones, some damage might have been caused with what is covered by the scene observation panchanama mentioning time, office glasses filed find broken, doors damaged and one computer found damaged and two of the vehicles Qualis and Jeep glasses have been damaged. It cannot be attributed that accused along with LWs.3 to 6 referred supra shows both the parties attacked one against other with stones or by pelting stones.

15. In fact, police filed charge sheet in both the crimes and in one of the crimes, undisputedly, this Court another Bench

long back quashed the proceedings. The same analogy equally applies to the case on hand from the factual discussion supra of the dispute is predominantly civil in nature, outcome of the same, though, no one can take law into their hands, it cannot be attributed to accused alone of any offence under Sections 323 and 407 IPC and no other offence that attracts from the statements of LWs.3 to 6 showing both parties attacked against each other and once the case of the other side covered by Crime No.687 of 2010 ended in quashing, it is nothing but unjust and abuse of process to continue the case on hand covered by crime No.688 of 2010, outcome of same occurrence of mutual sudden fight attack. Hence, to meet the ends of justice, the criminal petition is liable to be allowed.

16. Accordingly, the Criminal Petition is allowed by quashing the proceedings against the petitioners/A1 to A3 in C.C.No.519 of 2013 on the file of the VII Metropolitan Magistrate, Hayathnagar, Cyberabad.

17. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.12.2018
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