

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7958 OF 2018

ORDER:

This petition is filed under Section 482 of Cr.P.C. by the petitioners-accused Nos. 5 and 7 to quash the proceedings against them in C.C.No. 1212 of 2017 on the file of the Court of IV Additional Chief Metropolitan Magistrate at Hyderabad registered for the offences punishable under Sections 341 and 506 read with Section 34 of IPC.

2. Respondent No. 2 lodged a report with police on 24-05-2017 alleging that she was residing in house bearing No. 1-9-278/49/B/1, 1st floor, Balaji Nagar, Ramnagar, Hyderabad, since the date of her marriage with accused No. 1; that she had been to her parents' place as she was sick and dire need for some care; that when she returned home on 20-03-2017, the door lock was found broken and the petitioners pushed her aside and not allowed her inside and locked the main entrance gate which is common entrance to all the inmates of the house; that thereafter, she also witnessed that the petitioners and their children were moving illegally into her portion and that thereupon, she brought to their notice the residence order and protection order passed in D.V.C.No. 69 of 2010 on the file of the Court of III Metropolitan Magistrate at Nampally, Hyderabad, filed by her but instead of honouring it, the petitioners and accused No. 1 did not allow her to continue in possession of the abovementioned house and abused her in filthy language. On the strength of the above report, a case in crime No. 97 of 2017 is registered, issued FIR and took up investigation. During the course of investigation, the police examined as many as five witnesses and recorded their statements under Section 161 (3) of Cr.P.C. After completion of investigation,

the police filed charge sheet only against the petitioners and accused No. 1 for the offences referred *supra*.

3. The present petition is filed by the petitioners-accused Nos. 5 and 7 mainly on the ground that the allegations made in the charge sheet and the statements recorded by the police during investigation did not disclose the ingredients to constitute the offences punishable under Sections 341 and 506 of IPC and that the petitioners are also entitled to enjoy the property being joint family property.

4. At the hearing, learned counsel for the petitioners while reiterating the contentions raised in the petition has placed reliance on the judgment of the Apex Court in ***Rajinder Singh Katoch Vs. Chadigarh Administration and others***¹ in support of his contentions.

5. Learned Public Prosecutor (T.S.) has opposed the petition on the ground that the allegations made in the charge sheet and the statements recorded by the police are suffice to constitute the offences punishable under Sections 341 and 506 of IPC.

6. Learned counsel for respondent No. 2 has contended that the allegations made in the report are suffice to constitute the offence punishable under Section 341 of IPC and that though the material on record does not disclose commission of the offence punishable under Section 506 of IPC, it however attracts the offence punishable under Section 509 of IPC and prayed to dismiss the petition.

6. As seen from the allegations made in the report, respondent No. 2 lived with her husband-accused No. 1 in the first floor of house bearing No. 1-9-278/49/B/1 and when she went to her parents' house as she was in need of care,

¹ AIR 2008 SC 178

the said house portion was occupied by the petitioners despite obtaining residential order in D.V.C.No. 69 of 2010 by respondent No. 2 and the same was confirmed in Criminal Appeal No. 518 of 2011 permitting her to stay in one room of the first floor. The basic allegation made against the petitioners is that despite granting order in D.V.C.No. 69 of 2010 by respondent No.2, her belongings were thrown out and she was not allowed to enter into the house. Thus, it is purely violation of the order in D.V.C. and the remedy open to respondent No. 2 is to approach III MM Court to enforce the order under Section 31 of Protection of Women from Domestic Violence Act, 2005. Instead of resorting to such procedure, respondent No. 2 lodged the present report with the police.

7. Yet, the other contention raised in the report is that respondent No. 2 was not allowed to enter into the house. Section 341 of IPC deals with punishment for wrongful restraint. Section 339 of IPC defines the word wrongful restraint and according to it, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Here, if the allegations made in the report and charge sheet are accepted as true, respondent No. 2 was restrained from moving in one particular direction *i.e.* to enter into the house by closing the main gate of the compound and she was not restrained from proceeding in any direction in which she has a right to proceed. Therefore, the act of the petitioners *i.e.* closing gate of the compound and not allowing respondent No. 2 from entering into the house does not constitute the offence punishable under Section 341 of IPC on the face of the allegations made in the report.

8. The other offence allegedly committed by the petitioners is punishable under Section 506 of IPC but the allegations made in the report, charge sheet

and the statements recorded by the police did not disclose anything about threatening respondent No. 2 with any injury to her person, reputation or property, or to the person or reputation of any one in whom she is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do. In the absence of any threat, based on the alleged abuse of respondent No. 2 in filthy language, it is difficult to conclude that there is *prima facie* material against the petitioners to proceed for the offence punishable under Section 506 of IPC. On close examination of the material available on record, I find no material to constitute the offence punishable under Section 506 of IPC.

9. One of the contentions raised by learned counsel for respondent No. 2 is that the allegations made in the report would attract the offence punishable under Section 509 of IPC. Section 509 of IPC deals with punishment for insulting the modesty of a woman by uttering any word, making any sound or gesture or exhibits any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman. In the case on hand, except alleging that the petitioners abused respondent No. 2 in filthy language, nothing was mentioned whether those acts are intended to insult the modesty of respondent No. 2 or intrude upon the privacy of respondent No. 2. In the absence of any material to substantiate the ingredients for the offence punishable under Section 509 of IPC, it is difficult to accept the contention of learned counsel for respondent No. 2 that those allegations would constitute the offence punishable under Section 509 of IPC.

10. In view of my foregoing discussion, I find that it is a fit case to quash the proceedings against the petitioners-accused Nos. 5 and 7 since the allegations

made in the report do not constitute the offences punishable under Sections 341 and 506 of IPC or at least 509 of IPC as contended by learned counsel for respondent No. 2.

11. The criminal petition is accordingly allowed quashing the proceedings against the petitioners-accused Nos. 5 and 7 in C.C.No. 1212 of 2017 on the file of the Court of IV Additional Chief Metropolitan Magistrate at Hyderabad. This order however will not preclude respondent No. 2 from enforcing the residential order in D.V.C.No. 69 of 2010. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 14-09-2018.
JSK

M.SATYANARAYANA MURTHY, J.



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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DATE: 14TH SEPTEMBER, 2018

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