

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8867 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.605 of 2016 pending on the file of I Additional Judicial Magistrate of First Class, Nizamabad, registered for the offences punishable under Sections 448 and 506 IPC.

Respondent No.2 – Banchu Lingam filed private complaint before the Magistrate alleging that there were disputes with regard to the money transaction and that on 02.11.2014 A1 promised to repay the amount due, but he has not discharged the loan amount and cheated. It is also contended that on 12.04.2015 A1 to A3 by name Yerra Praveen, Yerra Naveen and Manu Pratap.J criminally trespassed into his house and threatened with dire consequences if they demand to pay the amount and requested to take necessary action against the accused. The Magistrate referred the matter to the police exercising power under Section 156(3) Cr.P.C. On the basis of the said complaint, the police registered Crime No.111 of 2015, for the offences punishable under Section 406, 420, 448 and 506 IPC. On the strength of the FIR, the Sub-Inspector of Police took up investigation and recorded the statements of witnesses under Section 161 (3) Cr.P.C. After completion of investigation, having concluded that there is material to proceed against the accused for the offences punishable under Sections 448 and 506 IPC and filed charge sheet alleging that the petitioners/A1 and A2 along with A3 trespassed into the house on 12.04.2015 and abused the 2nd respondent in filthy language while demanding for return of cheque, promissory note etc.

The petitioners/A1 and A2 filed this petition on the ground that the allegations made in the charge sheet including the statements recorded by

the police under Section 161(3) Cr.P.C. does not disclose the commission of offence muchless the offence under Section 448 IPC and requested to quash the proceedings against the petitioners and that the complaint was filed only with a malafide intention to bring the petitioners to the terms of the 2nd respondent to settle the private dispute of payment of money, allegedly borrowed by A1 and in such a case, this Court can exercise power under Section 482 Cr.P.C.

During hearing learned counsel for the petitioners reiterated the contentions urged in the petition while drawing the attention of this Court to the statements recorded by the police and requested to quash the proceedings. He also contended that the 2nd petitioner was in China on the relevant date and produced the copy of passport to show that he was not in India.

The 2nd respondent filed private complaint before the Magistrate for the offences punishable under Sections 406, 420, 448 and 506 IPC. The main allegation made in the complaint in para 9 is that on 12.04.2015 A1 along with A3, who is ex-police personnel came to the house of the complainant, A3 took a revolver and threatened the complainant not to demand for repayment of the money lent by the complainant and A1 abused the complainant in filthy language and threatened to kill him.

The statement of the 2nd respondent recorded by the Sub-inspector of Police show that on 12.04.2015 Praveen along with Manu, Pratap came to his house and abused him in filthy language and threatened him, if he demand for repayment of money and took away the promissory note, cheque. The same is supported by the statement of LW.2-Chinta Srinivas and corroborated by LW-3- B.Ravi. On the basis of these statements, the police filed charge sheet before the Magistrate only for the offences punishable under Sections 448 and 506 IPC. Even in the allegations made

in the charge sheet are that on 02.11.2014 A1 to A3 took an amount from the 2nd respondent for their personal needs and issued cheques and title deeds of the houses and later petitioners took back the title deeds from the 2nd respondent stating that they obtain loan from the bank and repay the same and as such the title deeds were returned, but no amount was paid by A1 to A3. The 2nd respondent approached the other witnesses by name B.Ravi and Srinivas and in their presence A1 and A2 agreed to repay the amount in the first week of January, 2014. In the month of April, 2015 A1 and A2 illegally trespassed into the house of the 2nd respondent and threatened with dire consequences, if he demands for repayment of the amount. Again on 12.04.2015 A1 along with A3 illegally trespassed into the house of the 2nd respondent and took away the promissory notes, cheque etc. Thus, the accused committed the above offences.

The basis for filing charge sheet is statements recorded by the police during investigation under Section 161(3) Cr.P.C. and other evidence collected. As seen from the allegations made in the statements recorded by the police the petitioners came to the house the 2nd respondent on 12.04.2015 and abused him in filthy language while snatching away the promissory notes, cheques etc while threatening to kill if he demands for repayment of amount. The petitioners allegedly came to the house of the 2nd respondent and abused him did not constitute the offence punishable under Section 448 IPC.

Section 448 IPC deals with punishment for house trespass and the house trespass is defined under Section 442 IPC. According to Section 442 IPC trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass". Criminal trespass is defined under Section 441 IPC as whoever enters into

or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

Therefore, to constitute offence punishable under Section 448 IPC, there must be criminal trespass into the house or remaining in any building, tent or vessel used as a human dwelling.

Here in this case, as per the statements recorded by the police, the petitioners came to the house of the 2nd respondent. Mere coming to the house of the 2nd respondent and snatching away the promissory notes, cheques etc do not constitute the offence punishable under Section 448 IPC since there was no entry into the house by the petitioners to constitute the offence of criminal trespass as defined under Section 441 IPC and house trespass under Section 442 IPC to punish them under Section 448 IPC. In the absence of any allegation that they entered into the house with intent to commit offence etc. it is difficult to conclude that the petitioners committed the offence *prima facie* the material collected during investigation does not disclose the commission of offence punishable under Section 448 IPC. But the allegations in the charge sheet coupled with the statements recorded by the police disclose that the petitioners committed the offence of criminal intimidation, insult and annoyance as defined under Section 503 IPC, which is punishable under Section 506 IPC since the petitioners allegedly threatened the 2nd respondent with dire consequences, if he demands for repayment of amount. Therefore, I find no ground to quash the proceedings for the offence punishable under Section 506 IPC and I find no material to proceed against the petitioners for the offence punishable under Section 448 IPC.

The major ground raised before the Court on behalf of the 2nd petitioner is that he was in China on the relevant date of incident and produced Photostat copies of passport in support of his contentions. Virtually, the plea raised by the 2nd petitioner is plea of alibi, which is a question of fact, which has to be decided during trial based on evidence to probabalize that he was at a different place and there is no possibility of appearing at the scene of offence at the time and date of commission of offence and such evidence is permissible under Section 11 of the Indian Evidence Act. Therefore, on the plea of alibi the proceedings against the 2nd petitioner cannot be quashed at this stage.

In view of my foresaid discussion, the criminal petition is allowed in part quashing the proceedings in C.C.No.605 of 2016, pending on the file of I Additional Judicial Magistrate of First Class, Nizamabad against the petitioners for the offence punishable under Section 448 IPC while permitting the Magistrate to proceed against the petitioners for the offence punishable under Section 506 IPC and directed the Magistrate to let in evidence improbabilise the case of the prosecution about the presence of A2 at the scene of offence at relevant time and date and decide the calendar case in accordance with law.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

23.08.2018
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