

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.7254 of 2010

ORDER:

Heard the learned counsel for the petitioners as well as the respondents.

The present petition is filed to quash the proceedings initiated in Crime No.147 of 2010 for the offence under Sections 211, 120B, 199, 228, 353, 406, 420 and 506 read with 34 IPC and Section 3(1)(viii) and (ix) and Section 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 156(3) Cr.P.C of IV Town Police Station, Nellore.

A brief reference to the factual aspects of the case is as under:

The petitioners are accused Nos.3, 4, 6 to 9, 13 and 16 in the above said crime. The 1st respondent filed a private complaint against the petitioners and eight others for the above said offences in the Court of V Additional Judicial First Class Magistrate, Nellore. The Magistrate referred the said complaint to the Deputy Superintendent of Police, Nellore, for investigation under Section 156(3) Cr.P.C. Pursuant thereto, a crime has been registered vide FIR.No.147 of 2010 of IV Town Police Station, Nellore.

The facts as revealed from the material on record are that a private finance company by name "The Balaji Lockers

Benefited Fund (P) Ltd” was doing business of accepting deposits from public and lending to the general public on different rates of interest. During the year 2000, the said company failed to repay the matured deposits resulting in a public hue and cry against the said company. In those circumstances, it appears that the Government have advised the Superintendent of Police, Nellore, to settle the issue. However, even before the said matter was brought to the notice of the police, there was an understanding between A1 and A2, the company and A10 to A12 representing the depositors. According to the understanding, on 07.04.2010, A1 and A2 handed over the title deeds of the house belonging to A1 to A10 to A12 and they executed promissory notes and issued cheques in favour of A10 to A12. A1 and A2 in turn promised to pay the entire amount within six months. When A1 and A2 failed to repay the said amount within the said agreed period, A10 to A12 brought the matter to the notice of the Superintendent of Police on 06.12.2001, who, in turn, endorsed the complaint for compliance. The 1st respondent, who is the complainant, sent the constables to the house of A1 and A2 to call them for enquiry. On 13.12.2001, at 11.15 a.m., A2 approached the 1st respondent and informed that he is ready to settle the issue pending with A10 to A12. At about 5.30 p.m. when the 1st respondent came back to his office, A2 to A7 were sitting in the office and A3, an advocate, who is the 1st petitioner herein, introduced A4, who is the 2nd

petitioner herein, as a Court Commissioner and showed a warrant and questioned the 1st respondent as to why A2 and his father were arrested and kept in illegal custody. Whereupon, the 1st respondent requested the Commissioner to enquire into the facts stating that it is not a police station and there are no lockups and informed that he will produce A2 and his father before the Court. When they were being taken to produce into the Court, A2 consumed Monodip tablets and became unconscious. Therefore, he was admitted in a hospital. The father of A2 was produced and the Court adjourned the matter to 15.12.2001.

According to the 1st respondent, a false complaint was filed by A1 through A3 wherein she stated that they were being harassed since two months and they were forced to execute promissory notes, cheques apart from registering the house in favour of A10 to A12. All the accused entered into a criminal conspiracy and in pursuance thereto, A3 filed a false complaint before the Human Rights Court, Nellore, against him and got appointed a Court Commissioner and made him to submit a false report. In that connection, A3 i.e., the 1st petitioner herein filed a petition in the Human Rights Court under Section 30 of Human Rights Act in Crl.M.P.No.846 of 2001 praying issuance of the search warrant for production of husband of A1 and her son (A2), who are wrongfully detained in the Police Club, Nellore. The Court appointed A4 i.e., the 2nd petitioner as Commissioner and issued warrant of

commission. A3, A5, A6 and A7 accompanied the Advocate Commissioner to identify the detenues. The 1st respondent, after perusing the warrant, released the detenues and when they were returning, they were called back and the 1st respondent abused the Judge, who issued warrant and the lawyers, who came with the warrant. In fact, in the presence of A3 to A7, A2 and his father were beaten black and blue by the 1st respondent. In those circumstances, they filed a report before the Human Rights Court at Nellore. In response thereto, the Principal Sessions Judge at 7.30 p.m. appears to have directed the Additional Superintendent of Police to produce the detenues within one hour. The 1st respondent produced the husband of A1 before the Chief Judicial Magistrate at 8.30 p.m. He also produced A2 on 16.12.2001, since he consumed sleeping pills and was admitted into hospital. It appears some contusions and swelling found on his body. The Court recorded his statement and he was sent to head quarter's hospital with a Court staff. In that connection, it appears A1 filed a private complaint against the 1st respondent and other police officials, which was taken on file as PRC.No.53 of 2003 for various offences and after committal, the Sessions case was numbered as S.C.No.355 of 2006 and it is pending consideration. On the report given before the Human Rights Court, the 1st respondent was being prosecuted and S.C.No.122 of 2004 is pending on the file of I Additional Sessions Judge, Nellore, for the offences under

Section 342, 225, 228, 323 and 353 IPC, wherein charges were framed on 07.07.2009 and the same is also pending trial. It is specifically stated that after more than 9 years when the said cases have become ripe for trial, the 1st respondent filed the present complaint against the petitioners and eight others. As far as the petitioners are concerned, there are no specific allegations against them except saying that A3 i.e., the 1st petitioner lodged a complaint at the instance of A1 and A4 i.e., the 2nd petitioner, who was appointed as Commissioner. Therefore, the crime registered against the petitioners is sought to be quashed.

Learned counsel for the 1st respondent opposed the petition on the ground that there are disputed questions of fact with regard to the happenings taken place on 13.12.2001 in the police club.

On a perusal of the material on record, the undisputed fact is that the present complaint is lodged by the 1st respondent pursuant to an incident happened on 13.12.2011 i.e., after a gap of more than 9 years. A perusal of the complaint would also indicate that except stating that the 1st petitioner filed a complaint at the instance of A1 and the 2nd petitioner was appointed as a Commissioner, there are absolutely no allegations whatsoever against the petitioners. In the complaint except making a bald statement that all the accused entered into criminal conspiracy, there is no other specific allegation. That apart, the present complaint is filed

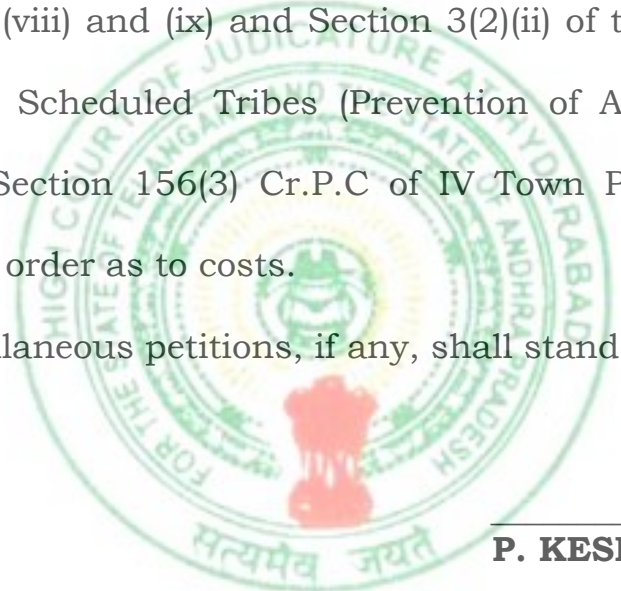
after a long gap of more than 9 years. This fact itself would *prima facie* establish that there is no truth in the allegations made by the 1st respondent. That apart, even the conduct of the 1st respondent being an Inspector of Police is not expected to keep silent for more than 9 years for filing the present complaint. In these circumstances, this Court is of the opinion that no *prima facie* case is made out against the petitioners.

During the course of hearing, it is brought to the notice of the Court that the 1st respondent died. Learned counsel for the petitioners would submit that since the 1st respondent died, the proceedings initiated on the basis of the said complaint do not survive. On such submission, when information is sought as to any application is filed under Section 302 Cr.P.C., seeking permission to conduct prosecution on behalf of the 1st respondent, the learned Public Prosecutor informed that no such application has been filed before the Magistrate. If that be so, no cause would survive in the complaint. That apart, the incident happened on 13.12.2001 i.e., about 17 years ago and at this length of time this Court feels that no useful purpose will be served in continuing the proceedings though they are at the investigation stage. Coupled with this, no specific allegations are made against the petitioners in the complaint. On this ground also this Court feels that continuation of the proceedings would amount to abuse of process of the Court,

since no legal steps are taken for continuing the prosecution by obtaining permission as required under Section 302 Cr.P.C. and no *prima facie* case is made out against the petitioners. In these circumstances, the proceedings initiated against the petitioners are liable to be quashed.

Accordingly, the criminal petition is allowed quashing the proceedings initiated against the petitioners in Crime No.147 of 2010 for the offence under Sections 211, 120B, 199, 228, 353, 406, 420 and 506 read with 34 IPC and Section 3(1)(viii) and (ix) and Section 3(2)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 156(3) Cr.P.C of IV Town Police Station, Nellore. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.



P. KESHA RAO, J

Date: 19.04.2018.
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