

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.9266 of 2015 and 1543 of 2016

COMMON ORDER:

Accused No.1 of Calendar Case No.787 of 2011 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad, is the quash petitioner in CrI.P.No.9266 of 2015 and accused Nos.2 to 7 in the aforesaid Calendar Case are the quash petitioners in CrI.P.No.1543 of 2016 respectively.

2. The 2nd respondent- *de facto* complainant is a retired I.A.S Officer. The 3rd respondent to the quash petition CrI.P.No.1543 of 2016 is no other than accused No.1 (petitioner in CrI.P.No.9266 of 2015) supra. The petitioners, who are A.1 to A.7 in both the petitions, are seeking to quash the proceedings in the aforesaid Calendar Case pending against them.

3. The contentions in the quash petitions in seeking to quash the Calendar Case proceedings are that the 2nd respondent-*de facto* complainant is the brother-in-law of accused No.1 (sister's husband). There were family properties and in relation to it, disputes arose between them. S.O.S.No.19 of 2001 filed against wife of the *de facto* complainant and others was ended in dismissal by the IV Additional District Judge, Narsapur, West Godavari District of Andhra Pradesh and appeal is pending against it. O.S.No.12 of 2002 pending on the file of the Principal District Judge, West Godavari District at Eluru, filed by wife of the *de facto* for partition was also ended in dismissal. Further, O.S.No.5 of 2005 on the file of the learned Principal District Judge, Eluru, filed by wife of the *de facto* complainant against brother's wife of accused No.1 and others including accused No.1 as

defendant No.8 was decreed in her favour and appeal A.S.No.355 of 2012 is pending in the High Court. The 2nd respondent-*de facto* complainant filed O.S.No.483 of 2014 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, against accused No.1 and several statutory authorities for perpetual injunction and impugning it, Writ Petition No.27227 of 2000 is filed in the High Court, which was later withdrawn and dismissed therefrom. Calendar Case No.224 of 2002 filed for the offence under Section 500 IPC against the wife of the *de facto* complainant, was taken cognizance by the Additional Judicial Magistrate of First Class, Narsapur, and was later quashed by the High Court in CrI.P.No.2858 of 2002 in view of intervention of elders. Further, Calendar Case No.581 of 2007 on the file of I Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, filed by the 2nd respondent-*de facto* complainant against accused No.1 and editor of the Newspaper called UNDEEL, of Narsapur Town, West Godavari District, was compromised by the *de facto* complainant with surviving accused that is accused No.1 herein as per the terms of Memorandum of Understanding, dated 31.10.2014. Calendar Case No.646 of 2011 before the Additional Judicial Magistrate of First Class, Narsapur, West Godavari District, filed by accused No.1 against *de facto* complainant herein was later withdrawn pursuant to the Memorandum of Understanding supra dated 31.10.2014. Further, Calendar Case No.787 of 2011 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, filed for the offence under Section 500 IPC by the *de facto* complainant herein against accused No.1 and six others including of TV 9 personnel and that is also required to be withdrawn as per condition No.4 of the Memorandum of Understanding supra, dated 31.10.2014. CrI.P.No.10034 of 2011 filed by accused No.1 herein for quashing of

said Calendar Case No.787 of 2011 and CrI.P.No.8717 of 2011 filed by *de facto* complainant herein for quashing of Calendar Case No.646 of 2011 were dismissed by the High Court on 14.10.2014. Further Crime No.11/ACB-CIU/2012 on the file of the Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, filed by accused No.1 against *de facto* complainant herein under Section 13 of the Prevention of Corruption Act, 1988 read with 164, 165, 169 and 406 IPC, was referred by the ACB police for lack of evidence and closed by the Court, from which the petitioner/accused No.1 filed CrI.R.C.No.683 of 2014 and ultimately not pressed and dismissed for non-prosecution on 05.06.2016 pursuant to the Memorandum of Understanding arrived on 31.10.2014 supra. Further, Calendar Case Nos.385 and 386 of 2007 pending on the file of IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, filed by the mother the *de facto* complainant herein against him are pending. The G.O., withdrawing his prosecution was struck down by this Court in Writ Petition No.20389 of 2006, filed by his mother and confirmed by Division Bench in W.A.No.664 of 2009, preferred by *de facto* complainant herein and Special Leave Petition against the same is pending before the Apex Court.

4. Basing on the report given by the daughter-in-law of the *de facto* complainant, the Station House Officer, II Town Police Station, Kakinada, registered a case in Crime No.91 of 2009 for the offence under Section 498 A IPC against him and his family members including his son.

5. It is mentioned that through elders it was decided to bury the hatchet and opt for the olive branch, good sense, having dawned on

them, resulting their execution of Memorandum of Understanding, dated 31.10.2014 with the terms including the following terms.

- 1) That the First party shall immediately file an application before the AFJFCMM, Narsapur, in C.C.No.646/2011 for withdrawal of the said complaint filed against the Second party.
- 2) The Second party after the dismissal of the said case stated in the No.1 condition above shall immediately file an application in C.C.No.581/2007 on the file of the I Addl.CMM, Nampally, Hyderabad, filed against the First Party and withdraw the same.
- 3) The First Party also shall immediately after execution of this compromise agreement address a Letter to his counsel for withdrawal of CrI.R.C.No.683/2014 which is pending on the file of the Hon'ble High Court.
- 4) The Second Party shall also filed an application thereafter for withdrawal of C.C.No.787/2011 which has been filed against the First Party and others, only in respect of the deletion of the name of the First Party. The Second Party shall be at liberty to continue the case against the other Accused.
- 5) Both the parties hereby specifically assert that they do not have any further claims as against each other and the First Party hereby assures the Second Party shall in all manner give respect to the First Party and abide by his directions in all the family matters. The First party has realized that he was completely mislead and misguided by third parties which has resulted in his action of filing the aforesaid cases and therefore had offered to settle the issue amicably.
- 6) Both the parties after execution of this Agreement shall complete the filing of the aforesaid applications within a period of one month from the date of execution of this MOU.
- 7) Both the parties shall be at liberty to file a cop of this MOU in the respective cases wherein applications are filed for withdrawal, if required.
- 8) This MOU is being made in two original copies. Each copy shall be kept with each party."

In obedience to the Memorandum of Understanding and the terms supra, accused No.1 has to withdraw cases referred supra including

Calendar Case No.646 of 2011 and CrI.P.No.683 of 2014 by cause its dismissal C.C.No.581 of 2007 by complied with condition No.2 of Memorandum of Understanding. However, the litigious-the 2nd respondent developed fondness for litigation not so far withdrawn Calendar Case No.787 of 2011 against any of the accused persons of the two quash petitions, even the Memorandum of Understanding, dated 31.10.2014, mentions the same for the withdrawal and so far thereafter seven adjournments went on in making them to go round with mismus mechanization of the 2nd respondent. Apart from it, the *de facto* complainant-2nd respondent preferred CrI.M.P.No.609 of 2015 in C.C.S.R.No.90 of 2014, arising out of Crime No.11/ACB-CIU/2012, alleging that accused No.1 committed the offence under Section 193 IPC by giving false evidence, leading to registration of said crime ignoring the fact that criminal revision case against the referral report of Crime No.11/ACB-CIU/2012 supra in compliance with the Memorandum of Understanding of condition Nos.2 and 3 was withdrawn. When the accused asked including by legal notice of accused No.1, date 14.08.2015, for not withdrawal of the Calendar Case No.787 of 2011 by the 2nd respondent pursuant to the Memorandum of Understanding, dated 31.10.2014, and as to why he filed fresh CrI.M.P.No.609 of 2015, despite Memorandum of Understanding clause-5 prohibits both parties to indulge in further litigation including by filing any petition and to withdraw the case supra, gave a reply, dated 20.08.2015 saying that he is waiting for an opportunity to withdraw the said Calendar Case No.787 of 2011 and going to withdraw within 30 days as per condition No.6 of the Memorandum of Understanding. However, he failed to comply. Leave about, he stated in the report further of CrI.M.P.No.609 of 2015 allegedly filed prior to Memorandum of Understanding, dated

31.10.2014 or it is nothing to do with Memorandum of Understanding though the said crime No.11/ACB-CIU/2012 is part and parcel and thereby sought for quashing the proceedings in C.C.No.787 of 2011.

6. Even the 2nd respondent-*de facto* complainant in both the petitions is appearing through Advocate, he did not dispute the facts including the Memorandum of Understanding conditions, the reply of him to the notice of accused No.1 of going to withdraw the case. Once such is the case and there is settlement under the Memorandum of Understanding, dated 31.10.2014, it is the parties to withdraw all pending litigations, particularly the criminal cases and from the conditions of Memorandum of Understanding referred supra, not even in dispute, the continuation of the proceedings are nothing but abuse of process as laid by the Apex Court in **Ruchi Agarwal v. Amit Kumar Agarwal and others**¹ and also from the expression of the Apex Court in **CBI v. Akhilesh Singh**¹.

7. Hence, by taking into consideration of these facts and the expression of the Apex Court in **State of Haryana v. Ch. Bhajan Lal**² guideline No.g speaks of continuation of criminal prosecution is manifestly attended with *mala fide* or instituted maliciously or continuing with ulterior motive to wreak vengeance or with spite and ill will or for personal and private grudge, the same cannot be allowed to sub-serve the ends of justice and to prevent abuse of process of law. Further, the Apex Court in **State of Karnataka v. L.Muniswamy**³, observed that the High Court is entitled to quash the proceedings if it comes to the conclusion that allowing the

¹ AIR 2005 SC 268

² AIR 1992 SC 604

³ 1977 (2) SCC 699

proceedings would be an abuse of process of the Court or that ends of justice required the proceedings are to be quashed, for Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution and the veiled object behind a lame prosecution would justify High Court to quash the proceedings for ends of justice are higher than the ends of mere law those justice would as to be administered according to the laws made by the legislation.

8. Having regard to the above, both the criminal petitions are allowed quashing the proceedings in C.C.No.787 of 2011 on the file of Court of III Additional Chief Metropolitan Magistrate, Hyderabad, in so far as the petitioners/A.1 to A.7 are concerned.

Miscellaneous petitions, if any, pending in these two petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

JANUARY 21st, 2019

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:21.01.2019

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