

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7260 OF 2013

ORDER:

The petitioners are the two accused in C.C.No.1351 of 2012 on the file of the learned XI Metropolitan Magistrate, Cyberabad, at L.B. Nagar, taken cognizance for the offences punishable under Sections 290 & 504 of Indian Penal Code (for short, 'IPC') from the police final report of Saroornagar Police Station, Cyberabad, which is outcome of CrimeNo.682 of 2012, dated 25.10.2012, registered for the said offences of the report of the *de facto* complainant Smt. M.Prasanna Laxmi, Assistant Director of Survey and Land Records, New Gaddiannaram, after examination of the *de facto* complainant and three more witnesses by the two Police Officers, who conducted investigation among L.Ws.1 to 6 *viz.*, M.Nageshwar Rao of New Gaddiannaram, Md. Layaq Ali Khan, Superintendent and Chithari Laxmi Narsimha Varma, Assistant Director, respectively. The said cognizance order is under impugment herein the quash petition saying on the face value of the reading of the police final report from the investigation referred supra, none of the ingredients of any of the offences that attract and thereby the continuation of proceedings are nothing but abuse of process by drawing attention to the two expressions of the Apex Court on the scope of Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') of **Dr.Sharada Prasad Sinha v. State of Bihar**¹ saying where the allegations set out in the complaint or charge sheet do not constitute any offence, it is competent for the High Court to quash the proceedings by exercise of the inherent power and the other expression of **Asmathunnisa v. State of Andhra Pradesh represented by the Public**

¹ (1977) 1 Supreme Court Cases 505

Prosecutor, High Court of Andhra Pradesh, Hyderabad and another²

particularly placed reliance on para 13, the three ingredients that are referred laid down in **R.P.Kapur v. State of Punjab³** by placing reliance on the second ingredient as to where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged and coming to the ingredients of Section 504 IPC, placed reliance on the expression of the Apex Court in **Fiona Shrikhande v. State of Maharashtra and another⁴** particularly observations at paras 12 and 13 saying Section 504 IPC comprises of ingredients of intentional insult, the insult must be such as to give provocation to the person insulted and the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence and one of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient.

2. The learned Public Prosecutor submits that each case depends upon own facts and there are no precedents on facts, particularly in criminal law, but for the principle laid down in the expressions to be considered and there is no quarrel on the propositions placed reliance, but for to say the very act of abusing over phone and again handing over the phone to the husband cause abused itself is sufficient to say that there is intentional insult from the investigation, particularly from the report and statement of *de facto* complainant and her husband and thereby sought for dismissal of the quash petition.

² (2011) 11 Supreme Court Cases 259

³ AIR 1960 SC 866

⁴ (2013) 4 Supreme Court Cases 44

3. Heard learned counsel for the petitioners and also the learned Public Prosecutor representing the 1st respondent State and perused the material on record.

4. Undisputedly there is no attracting of the offence defined under Section 268 IPC to attract the offence under Section 290 IPC. Thereby to that extent, the petition can be allowed. So far as the offence under Section 504 IPC concerned, the very wording of the Section reproduced in **Fiona Shrikhande v. State of Maharashtra and another (4 supra)** at para 12 clearly speaks whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. It is a non-cognizable offence and permission of the Magistrate already obtained as can be seen from registration of the crime and final report filed. Thereby Section 155 of Cr.P.C. complied with not in dispute.

5. Now coming to the ingredients, there must be intentional insult and it may give provocation, either that provocation will cause to break the peace or to commit any other offence. So, break the peace is not the only required ingredient as likelihood of committing any other offence is even sufficient from the very wording and interpretation of Section 504 IPC in the expression supra. From this now coming to the facts, the very report in registration of the crime clearly shows the *de facto* complainant is Assistant Director (Head Quarters) in the Office of Commissioner, Survey Settlement and Land Record Department, Andhra Pradesh, and also as Deputy Director, Central Survey Office, Survey Bhavan, Narayanaguda, Hyderabad, and on 13.10.2012, when

she was at the office, it is about 5.00 P.M. while referring to the files maintained by the 2nd accused herein Smt. A.B.S.R. Rajeswari, CD Grade-II therein in the presence of Md.Layaq Ali Khan, L.W.3 of the charge sheet and Mr. Chithari Laxmi Narsimha Varma, L.W.4 in the charge sheet, having found that she did not do her job and ordered to take action and it was left the issue there and after office hours, they returned their respective homes. However at about 8.00 P.M., the *de facto* complainant received a phone call from said 2nd accused supra from the cell phone No.9440296856 to the mobile of the *de facto* complainant No.9866167331 and she started arguing with her and later hand over her phone to her husband, who started abusing her in most filthy language and she stated that he abused her with instigation of his wife and requested to take action, from which she reiterated the same in her statement that said A.B.S.R.Rajeswari over phone talked to her and questioned her and hand over the phone to her husband and they started threatening and abused in filthy language and the other two witnesses statements are what was happened in the office and what was informed by the *de facto* complainant of what was occurred in the night by the phone conversation. Here it is a mere abuse without causing any provocation to the *de facto* complainant either to commit breach of peace or to commit some other offence to attract the ingredients of Section 504 IPC? for questioned in non-performing the office duty of a subordinate by a superior officer in the presence of the other officers, her going to the house and threatening the superior officer over phone and cause threatening through the husband of her is nothing but intentional insult and it is to provoke to commit some other offence. Thereby *prima facie*, there is accusation from the circumstances and it is a matter for appreciation ultimately in trial.

Thereby sofar as the offence punishable under Section 504 IPC concerned, there are no grounds to quash the said cognizance order.

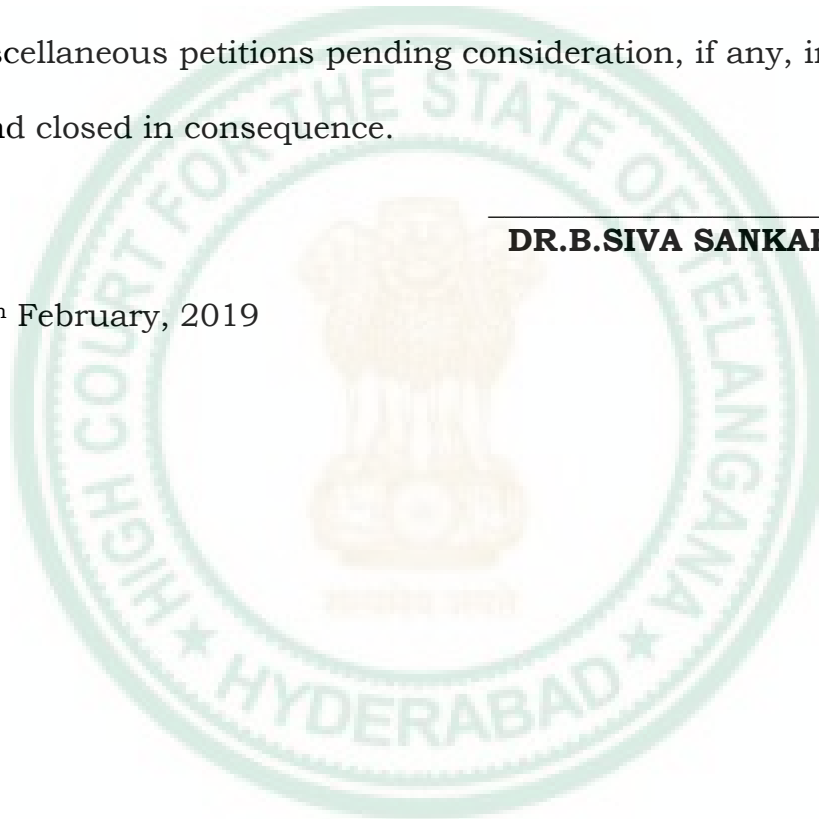
6. Accordingly, the Criminal Petition is allowed in part by quashing the proceedings against the petitioners/A-1 & A-2 in C.C.No.1351 of 2012 on the file of learned XI Metropolitan Magistrate, Cyberabad, at L.B.Nagar, so far the cognizance taken for the offence punishable under Section 290 IPC concerned and the Criminal Petition is dismissed sofar as the cognizance taken for the offence punishable under Section 504 IPC concerned.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 18th February, 2019

KL



134

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CRIMINAL PETITION No.7260 OF 2013

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