

**HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No.791 of 2016**

**ORDER:**

The petitioners are accused Nos.1 & 2 no other than father and son, in CC.No.959 of 2015 pending on the file of learned VIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, taken cognizance for the offences punishable under Sections 448 & 506 IPC, which is outcome of crime No.118 of 2015 dated 28.08.2015 of the 2<sup>nd</sup> respondent-defacto complainant in registration of the crime for the offences supra and it is impugning the same the quash petition is filed.

Heard learned counsel for the petitioners and learned counsel for the 2<sup>nd</sup> respondent-defacto complainant and learned Public Prosecutor representing the 1<sup>st</sup> respondent-State and perused the material on record.

The grounds urged in the quash petition are that the police not conducted proper investigation and mechanically filed the charge sheet by table investigation despite no offence made out that too there is no question of any trespass when the 1<sup>st</sup> petitioner is tenant doing business in the premises of the 2<sup>nd</sup> respondent and alleged threatening with dire consequences by trespass is an engineered averment conveniently to implicate the petitioners to coerce them to vacate the premises if possible other than due process of law and the proceedings thereby are liable to be quashed.

The learned counsel for the 2<sup>nd</sup> respondent-defacto complainant submits in contrary to the above quash petition averments and contentions of the learned counsel for the

petitioners that there is prima facie accusation and there are no grounds to quash the proceedings.

The sum and substance of the accusation in registration of the crime is that on 28.08.2015 the SHO, LW.8-B.Srinivasa Rao, Inspector, Bhavani Nagar PS, from the report of the defacto complainant Mohd Abdul Hameed-R2, registered the crime which reads that he is the owner of the house property No.18-7-198/A/132 consisting of ground floor, first floor and second floor total 106.66 square yards situated at Talabkatta, Mirjumla, Hyderabad and in the ground floor there are 2 mulgies and same were given on rent to the accused Mir Zahoor Ali where he is doing centring work and used to keep the centring material therein and as said mulgies required for personal purpose of the defacto complainant by converting them into rooms, he requested the accused to vacate the mulgies all of a sudden, A1 supra turned wild against him and started threatening with dire consequences by using abusive language also by showing knife saying if he tried to vacate them he will see his end and of his family. It is further stated on 18.06.2015 evening A1 and his son A.2-Mir Saboor trespassed into the house and threatened him with dire consequences and there is a danger to his life and property from above persons, hence to take action. There is no explanation for the delay in reporting the occurrence after 18.06.2015 evening till 28.08.2015 morning for about 50 days.

The charge sheet filed by the police from the above crime registered supra therefrom is by citing including the IOs, 9 witnesses of whom LW.1 is the defacto complainant, LWs.2 to 5 are the so called witnesses whose names not even referred in the FIR

about any of their presence and LWs.6 & 7 are the witnesses to the so called confession and disclosure and what the charge sheet in reference to it speaks is the IO-LW.9 after examined and recorded the statement of defacto complainant as LW.1 subsequent to the registration of the crime by LW.8, secured LWs.6 & 7 mediators prepared rough sketch and observed scene of offence by proceedings and examined LWs.2 to 5 and A.1 and A.2 were subsequently apprehended on 31.08.2015 when they voluntarily came and surrendered before the LW.9 in saying they admitted their alleged guilt from which they were arrested. The confession made before a police officer no way admissible. Undisputedly from the very report the mulgies at the ground floor were given on rent by defacto complainant to A.1. Even any of their attending to the other floor where defacto complainant resides or where he was by itself cannot be construed as trespass for otherwise they have approached to pay the rent to the landlord. In the report given after 50 days on 28.08.2015 for the alleged incident on 18.06.2015, the other vague averment is when he requested the A.1 to vacate he was allegedly threatening having turned wild and abused not even mentioned date or time of the alleged abuse much less by showing knife. Thereby there is no basis for that even and coming to the alleged occurrence on 18.06.2015 mentioned in few lines in the report of what was allegedly happened on that evening of A.1 and A.2 alleged trespass into the house of the defacto complainant in the same premises to which they are tenants at the ground floor shops and allegedly threatening with dire consequences. It is not even his case that they threatened with any weapon and it is not even his case that they used any force

and it is not even his case that he got any fear of harm in their hands even to attract the offence under Section 506 IPC for the police to register the crime or to file the charge sheet much less to take cognizance therefrom, leave about there is unexplained delay in reporting the occurrence.

Having regard to the above, this Criminal Petition is allowed by quashing the proceedings against accused Nos.1 & 2 in CC.No.959 of 2015 pending on the file of learned VIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, as the dispute is pre-dominantly civil in nature which cannot be allowed to add with criminal flavour.

Pending miscellaneous petitions, if any, shall stand closed.

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**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 22.02.2019  
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