

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12247 of 2018

ORDER:

The petitioners are accused Nos.1 & 4 among 5 accused including A.3-Chary since died in CC.No.343 of 2017 on the file of learned XVII Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance by order dated 18.04.2017 on the application in MP.No.439 of 2016 filed by the 2nd respondent, who is no other than defacto complainant in crime No.197 of 2014 of Musheerabad Police Station dated 07.05.2014 registered on his report for the offences punishable under Sections 447 & 427 IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act') and the police after investigation from the crime filed the final report on 18.12.2014 saying no material evidence to sustain the accusation thereby referred as lack of evidence. It is against that referred report from the notice served he raised the protest in CrI.M.P.No.439 of 2016 and from the evidence of him recorded as SW.1 in SR.No.254 of 2016 allotted to the protest petition, that was recorded on 28.03.2017. The learned Magistrate has taken cognizance for the offences punishable under Sections 352 & 355 IPC. Same is the subject matter of impugment herein.

2. Notice sent by RPAD to the 2nd respondent returned as unclaimed is a sufficient service, hence taken as heard and heard learned counsel for the petitioners and learned Public Prosecutor representing the 1st respondent-State and perused the material on record.

3. The sum and substance of the accusation in registration of the FIR on 07.05.2014 from the report of the protest petitioner no other than defacto complainant claimed as builder for the premises covered by the Tirumala Towers, Gandhinagar with door No.1-1-593/C as the case may be claimed as SC by caste, that the Tirumala Towers was constructed in 1980-81 and subsequently his father died on 03.06.2011 and he succeeded the same and the residents of Tirumala Towers who purchased plots or tenants as the case may be, having kept quiet all these years encroached illegally vacant land in front of the buildings by cutting off the medicinal plants, organic fruits and organic vegetables growing by him on the site with an ulterior motive to occupy the vacant land for their vehicular parking. It is further averred that he is thinking of undertaking construction of residential plots in that site which is a prime locality and people who are responsible for trespass and cutting away of the plants threatened him with dire consequences by causing serious physical harm as he is alone did not get into serious confrontation with trespassers harmed by them also abused in filthy language of “pora yavadikaina cheppuko yavadu yemi pika ledu” with intend to occupy the land.

4. So far as that allegation concerned, there is no time or place much less any public view much less to attribute any abusive language in public view to insult an SC by caste by non-SC to attract the Section 3(1)(x) of the Act or any other offence for the time being from the vagueness of the allegation not even in public place much less public nuisance. Coming to the further averments in the report it was on 26.03.2014 when pick his kids and saw the whole area was burning and it was at about 05.30

PM. The above persons wrongfully attempted to occupy the site and he belongs to SC (mala) community and they are harassing regularly by not allowing any persons to take the plots for rent and creating mischief. Even taken on face value of the allegations no offence under SC & ST (POA) Act that attracts from alleged preventing of tenants to occupy any of the vacant plots and the alleged regular harassment as vague as anything and what is stated is tried to occupy with no basis. What is further stated is when he went to see that area along with his kids found flames or site is burning. It is not even his case any one among the accused there much less they are responsible.

5. With these averments when the report given the crime was registered for the offences punishable under Sections 447 & 427 and 3(1)(x) of the Act against 6 persons by mentioning others also against 5 persons with plot numbers, watchman and others. The police final report dated 18.12.2014 reads that there are 10 witnesses including the IOs among LWs.7 to 10 and LW.1 is the defacto complainant, LW.2 is his wife, LW.3 is one Uday Kumar, LW.4 is one Syed Zaheer and LW.5 one M.Yellaiah who are said to be one circumstantial witness and 2 eye witnesses no way mentions any incident committed by accused much less witnessed by any person. LW.6 referred as Tahsildar who issued the caste certificate as mala. The police in the final report running in 12 pages in detail discussed what are the statements of the witnesses and stated there is no any offence made out under any of the penal provisions for which the crime was registered and thereby the final referred report filed as lack of evidence. It is therefrom protest petition filed.

6. In the protest petition what is mentioned is by repetition of the facts and by saying Para 4 onwards of he made complaints to the concerned police repeatedly and to the District Forest Officer about the damage of medicinal plants and Forest Officials imposed penalty of Rs.25,000/- on culprits and the SHO Musheerabad when he filed complaint against accused as abusing, humiliating and are threatening and prevented to occupy the land by their encroaching, called by issuing notice to him and he stated the facts and also submitted documents and it is on the instigation of the accused, IO did not make any investigation fairly and filed the referred report thereby allow the protest petition. It is not even stated as to he was not examined. It is not even stated as to when he was examined and document submitted those were not received or what he stated was not reflected in the protest. It is not even his submission in the protest that what he stated during investigation is not correct. It is not even his version in the protest petition what the witness examined during investigation referred in the final report are incorrect. Neither the learned Magistrate nor the complainant taken note of the fact that it is not an out right fresh private complaint but a protest against the police final report, it must undertake as to how the final report inaccurate and the protest against which on what aspects to be raised. What all his sworn statement on the protest recorded by following the private complaint procedure by the learned Magistrate that was recorded on 28.03.2017 speaks he is running educational institution in the name of MSC Educational society at Vanaparthi and Secretary of the Society and the issue relates to the land besides Tirumala Towers Hyderabad and the land adjacent was purchased by his

father through Court sale and he has planted medicinal plants, organic fruits and vegetables and fenced the same and after his demise in June 2011 after few months respondents broke open the fencing and cut down the plants for their benefit for parking purpose. It is not even his case that he immediately filed any complaint after June 2011 and it is his case that plants were planted by his father who died in June 2011 itself. What he mentioned further in March 2014 he went there and observed that residents cut plants, organic fruits and vegetables and it is not even his case that on any particular day he saw any of the cutting even from the sworn statement. He states that at that time residents pushed him and assaulted with sticks and abused in filthy language. These aspects are not there in the detailed FIR from the report. Thus the developments which cannot be considered as it is not even a fresh complaint but outcome of the protest to the original FIR and investigation.

7. Having regard to the above, even from that sworn statement there is no offence made out under Sections 352 & 355 IPC, leave about both are non-cognizable offences for the police to register the crime or from the final report learned Magistrate to take cognizance as it is not a fresh private complaint to take cognizance where whether cognizable or non-cognizable is immaterial if any even the original FIR is without permission under Section 155(2) Cr.P.C.

8. Having regard to the above, the cognizance order of the learned Magistrate has no grounds to sustain.

9. The law is very clear of this aspect as to how the proceedings and what are ingredients to satisfy under SC & ST

(POA) Act in **S.Bala Krishna Vs. The State of Telangana rep. by its Public Prosecutor**¹.

10. Further the Apex Court in **Rashmi Jain vs. State of Uttar Pradesh**² in Para 6 observed as follows on 22.03.2009 when the applicant met the accused in the market of Bazarganj Saraitareen and asked for his balance amount, the accused in the presence of two other persons flatly refused to pay the same and threatened if he ever asked for the payment they will kill.

11. A perusal of the averments shows it is of engineered allegation only to implicate in a money transaction similarly is the case on hand to say it is predominantly in civil nature of the so called vacant site apartment to the plots in question. Once such is the case, it cannot be allowed to add any criminal flavour on that ground and the cognizance order is unsustainable.

12. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the petitioners/A1 & A4 in CC.No.343 of 2017 on the file of learned XVII Additional Chief Metropolitan Magistrate, Hyderabad.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.01.2019
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¹ 2016 (2) ALT (Crl.)AP 428

² 2014 (13) SCC 553