

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13702 of 2018

ORDER:

Proof of service filed, second respondent *de facto* complainant not chosen to appear. Heard counsel for the petitioner and learned public prosecutor.

2. The Criminal Petition is filed by sole petitioner accused in C.C.No.564 of 2016 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate taken cognizance for the offences punishable under Sections 354, 506 and 509 IPC, which is outcome of a private complaint of the second respondent *de facto* complainant dated 24.02.2014 on the file of the VI Additional Chief Metropolitan Magistrate that was referred to police for investigation from which police registered Crime No.128 of 2014 of Humayun Nagar police station dated 28.03.2014. The police after investigation filed a charge sheet against the petitioner by citing six witnesses including three investigating officers LWs.4 to 6 and *de facto* complainant LW1, so called eye witnesses LWs.2 and 3. The private complaint of her by name Annie, W/o. Simon of Bangalore, temporarily residing at Tappachabutra, Hyderabad, filed against the petitioner Mohan Rayulu, referred as residing at Journalist Colony, Jubilee Hills, Hyderabad. On the date of occurrence on 21.02.2014 at Khaja Mansion at First Lancer, Hyderabad in

the presence of LWs.2 and 3 among others stated that she is a permanent resident of Bangalore and doing business with the accused as a working partner and the accused was the Managing Director of M/s.Bit 2 Byte on-line Digital Media Solutions Private Limited of Hyderabad and appointed the complainant as a Distributor and there was an agreement with terms and conditions from which the complainant deposited Rs.2 lakhs on 10.04.2013 at SBI Jayanagar, Bangalore, to the account of the accused, later but did not pay any returns to the complainant in the said business and aggrieved thereby she filed a private complaint before the XVII Additional Chief Metropolitan Magistrate, Hyderabad, against the accused for the offence of cheating and criminal intimidation that was referred to police, Jubilee Hills, Hyderabad who registered Crime No.555 of 2013, dated 05.11.2013 against the accused and accused obtained therein anticipatory bail and after enlarging on anticipatory bail, he contacted the complainant to withdraw the said Crime No.555 of 2013 and as she refused to do so, aggrieved thereby on 21.02.2014 at about 04.30 p.m., while complainant was heading towards Khaja Mansion at First Lancer with their friend Mr.Shaik Abdul Quddus LW2 for shopping the accused came to her and started scolding her in filthy and threatened her with dire consequences to see her end unless she withdraw the above crime No.555 of 2013 and he also caught hold of her hair at the main road and even tried to pull her

saree to outrage her modesty somehow public on the road came to her rescue and he ran away out of fear and immediately after that incident she approached Police Station, Humayunnagar to report against the accused but police after hearing the entire incident orally refused and advised her to approach Jubilee Hills Police Station and thereby filed the complaint, in seeking to refer to the police for investigation. She did not give any report in writing to the police, but for saying orally chosen to report and they asked to go to Jubilee Hills Police Station and not even given any written report to the Commissioner of Police or Assistant Commissioner or Additional Commissioner much less to the Station House Officer by post and in writing which is one of the pre-requisite and the alleged occurrence was dated 21.02.2014 and the private complaint filed was three days later on 24.02.2014 and she referred only LW2 as a friend of her, who accompanied her to the shop when heading towards Khaja Mansion at First Lancer where accused allegedly abused her in filthy in demanding to withdraw Crime No.555 of 2013 else to see her end and caught hold of her hair at the main road and tried to pull her saree to outrage her modesty and public came to her rescue. She neither enquired nor mentioned who are the other public. The statement of her is nowhere an improvement to the private complaint supra and coming to LW2 Sheik Abdul Quddus, date of examination not mentioned by the investigating officer, he stated that on 21.02.2014 at

about 04.30 p.m., while he was heading towards Khaja Mansion at first lancer with *de facto* complainant Annie for shopping, accused Mohan Rayulu came to her, started scolding in filthy and threatened with dire consequences to see her end unless she withdrew the case pending registered by Jubilee Hills Police Station and caught hold of her hair on the main road and even tried to pull her saree to outrage her modesty some how public on road came to her rescue and he ran away which is reiterated by the *de facto* complainant in the private complaint. Sofar as LW3 Md.Mateen, aged 19 years, wood furniture polishing works of Tallagadda, stated that on that day while he was passing Khaja Mansion at First Lancer, he saw one person came to one lady and started scolding her in filthy and threatened her with dire consequences, caught hold of her hair and tried to pull her saree to outrage modesty, some how public on the road came to her rescue and the accused ran away and he can identify him, which is hardly believable and it is not even his case that he is one of the person who rescued *de facto* complainant or chased accused or prevented accused. Even LW2 did not state he prevented the accused or came to the rescue of *de facto* complainant. This is nothing but apparently outcome of illegal action, and not a legitimate prosecution. It is hardly believable of the main road in the public a person to scold, caught hold of the hair of the woman and pulling and trying to remove her saree, and public did not chose to prevent and

not even caught hold of by anybody had it been a truth. There is nothing to attract the offence under Section 506 IPC of any criminal intimidation to the victim from which fear in the mind of the victim is essential pre-requisite that is lacking otherwise it is nothing but fighting in air so also the allegations to bring within its fold the alleged offence under Sections 354 or 509 IPC. As referred supra, apart from delay in report by filing private complaint, three days after occurrence, if at all there is any truth in the allegation, she should have sent registered post any complaint to the superior police officer as contemplated by Section 154 Cr.P.C. which is a pre-requisite to file private complaint from the settled expression of the Apex Court as on that day existing, when once that is lacking, referring of the private complaint without even assigning any reasons as to *prima facie* make a cognizable offence or not by the learned Magistrate mechanically and registration of the crime by police therefrom otherwise bound and mechanically filing of charge sheet with incomplete material, without proper investigation, without verification of the veracity of the statement of the witnesses by any material is hardly believable and the continuation is apparently nothing but abuse of process of law, thereby liable to be quashed to sub-serve the ends of justice.

3. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner in C.C.No.564 of 2016 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad are quashed and he is acquitted. The bail bonds of the petitioner, if any, shall stand cancelled.

4. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:21.01.2019
vhh

Dr. B.SIVA SANKARA RAO J,