

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

CRL.P.No.4507 OF 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-1 & A-2 in Cr.No.250 of 2011 of Jubilee Hills Police Station, Hyderabad, registered for the offences punishable under Sections 448, 427 and 380 IPC.

2. Heard learned senior counsel for the petitioners-A-1 & A-2 and also the first respondent-complainant, who appears as party-in-person and learned Assistant Public Prosecutor for the second respondent-State. Perused the material on record.

3. The first petitioner-A-1 and second respondent-complainant are husband and wife. The second petitioner-A-2 is the father of first petitioner-A-1. The complainant and accused are residing in the premises bearing No.265/N, Road No.10, Jubilee Hills, Hyderabad. It appears from the record that the complainant, who is an Advocate by profession, had filed spate of civil and criminal cases against the petitioners.

4. The first respondent filed the present complaint before Jubilee Hills Police alleging that on 19.05.2011 when she was away from India, A-1 and A-2 along with their staff, with a view to harassing her mentally and financially, illegally trespassed and broke open her office situated on the third floor of the premises bearing No.265/N, Road No.10, Jubilee Hills, Hyderabad and committed theft of, pending court files, journals, computers, printers, furniture etc. She further alleged in the complaint that the accused committed criminal trespass, theft and criminal intimidation, domestic violence and dispossessed her contrary to law and the Domestic Violence Act as well as the order of the learned Judge, Family Court, City Civil Court, Hyderabad. After her return to India, she found that the accused put a barricade on the third floor to prevent her entry into the office.

5. During the pendency of the proceedings, learned counsel for the petitioners reported that A-2 died. Therefore, the proceedings against the second petitioner-A-2 stands abated.

6. Learned senior counsel for the petitioners vehemently contends that the allegations in the complaint do not constitute any of the offences alleged; that the complainant filed spate of civil and criminal cases and also the present petition only to harass the petitioners. He further submits that undisputedly A-2 is the owner is the owner and possessor of the whole building where the alleged offence had taken place and the entire third floor of the building is under tenancy to a public limited company i.e., M/s Krishna Godavari Power Utilities Limited. Learned senior counsel further submits that the complainant was permitted to stay in the second floor of the building and she was never in exclusive possession of the third floor. Therefore, the allegations of criminal trespass, mischief and theft made by the complainant against the petitioners, who are none else than husband and father-in-law, are baseless and the present complaint is filed with an oblique motive. Learned senior counsel, therefore, prays for quashing the proceedings against the petitioners. In support of his contentions and submissions, the learned senior

counsel relied on the decision of the Hon'ble Apex Court in **STATE OF HARYANA v. BHAJAN LAL**¹.

7. *Per contra*, the first respondent-party-in-person submits the allegations in the complaint *prima facie* disclose commission of cognizable offences and there are no tenable grounds to quash the proceedings against the petitioners/A-1 and A-2. She further submits that by virtue of the civil court orders and the protection orders granted by the DVC court establishes that she is in possession of her office premises in the third floor. She further submits that during her absence, the petitioners broke open her office in the third floor of the premises and all her books, pending court files, journals, computers, printers, furniture etc., were shifted from third floor office room to the ground floor. She prays to dismiss the petition to enable the investigating agency to proceed with the investigation and submit final report. In support of her submissions, she relied on a decision of the Hon'ble Apex Court in

¹ AIR 1992 SC 604

SKODA AUTO VOLKSWAGEN INDIA PRIVATE LIMITED**V. THE STATE OF UTTAR PRADESH².**

8. Learned Assistant Public Prosecutor submits that the allegations in the complaint make out cognizable offences and investigating agency may be permitted to proceed with the investigation.

9. In **BHAJAN LAL**'s case (1 supra), the Hon'ble Apex Court laid the following guidelines while exercising the powers under Section 482 Cr.P.C and gave the following categories of cases by way of illustrations wherein such power could be exercised either to prevent abuse of process of the court or otherwise to secure the ends of justice, as under:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers

² AIR 2021 SC 931

under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

- (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

10. In the said judgment, the Hon’ble Apex Court further held at paragraph 103 as under:

“We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice”.

11. Before advertng to the allegations in the complaint, the spate of litigation between the parties is stated as under.

12. The complainant filed O.P.No.1503 of 2010 before the Family Court, Hyderabad seeking divorce, maintenance, custody of daughter etc., and the same is stated to be pending. Subsequently, she filed O.P.No.1551 of 2010 before the Family Court, Hyderabad seeking to declare the gift deed dated 30.03.2000 executed by A-1 in favour of A-2 in respect of the OP schedule property as sham

and nominal. The said OP was returned by the learned Judge, Family Court for presentation before the appropriate civil court, vide order dated 28.03.2011, by holding that the said court has no jurisdiction to try the OP. As against the order dated 28.03.2011, the complainant filed appeal before this court in F.C.A.No.80 of 2011. This court vide order dated 19.04.2011 in F.C.A.M.P.Nos.166, 167 & 168 of 2011 in F.C.A.No.80 of 2011 observed as under:

“It is not in dispute that the petitioners are residing in the second floor of the house property, but there is dispute with regard to the office of the 1st petitioner in the 3rd floor where the big office of the 1st respondent also is situated. As the main controversy is required to be resolved in the appeal, and having regard to the facts and circumstances of the case, and as the learned counsel for the respondents has submitted that the house property would not be alienated, transferred or encumbered pending disposal of the appeal, we are restricting the injunctions granted by the Judge, Family Court, to the extent of restraining the respondents from interfering with the peaceful possession and enjoyment of the petitioners and other reliefs in respect of the second floor of the house property alone, until further orders”.

13. The complainant also filed an application against the petitioners in CrI.M.P.No.1302 of 2010 in D.V.C.No.274 of 2010

under Sections 18, 19, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005 before the IV-Metropolitan Magistrate, Hyderabad. The learned Magistrate vide order dated 20.11.2010 in Crl.M.P.No.1302 of 2010 passed order under Sections 18 and 19 of the said Act in favour of the complainant. Questioning the order dated 20.11.2010, A-2 filed D.V.C.Appeal No.428 of 2010 before the VII-Additional Metropolitan Sessions Judge, Hyderabad, who, by order dated 03.01.2011 set aside the order dated 20.11.2010 passed by the learned Magistrate under Section 19 of the DVC Act in Crl.M.P.No.1302 of 2010. Not satisfied with the same, the complainant preferred revision before this court in Crl.R.C.No.41 of 2011. This court by order dated 12.01.2011 dismissed the said revision by confirming the order dated 03.01.2011 passed by the learned MSJ in D.V.C. Appeal No.428 of 2010 and observed as under:

“Ms.Kiranmayee across the bar fairly stated that the first respondent is not interfering with the shared household of the first petitioner in the second floor of the house and his grievance is that the first petitioner has never set up office in the third floor and he is using that floor as the owner of the building for his business as he is Chairman of a public limited company.

Another question raised is whether a lady can claim place of employment also in a residential building in which she claims a shared household for setting up her office as a professional. These questions are also to be decided by the learned Magistrate. The statement of Ms.Kiranmayi that the first respondent is not interfering with the shared household of the first petitioner and her children in the second floor of the house is recorded".

14. Having perused the material on record and the litigation between the parties, as narrated above, coming to the present case, the first respondent filed a complaint before police against the petitioners and the same was registered for the offences punishable under Sections 448, 427 and 380 IPC.

15. The offence of house trespass is defined in Section 442 and punishment is prescribed in Section 448 IPC. The essential elements of house trespass read as under:

- (a) the accused committed criminal-trespass by unlawfully entering or
- (b) remaining on the property unlawfully after initial lawful entry;
- (c) the trespass was in respect of a building, tent, or vessel; and

- (d) the building, tent, or vessel was used as a human dwelling, a place of worship, or a place for the purpose of storing property.

This offence is an aggravated form of criminal trespass. As the house trespass is against the possession of property, it cannot take place if the person claiming is not in actual possession of property.

16. In the case on hand, the complainant claims that she is in the shared household of A-1 on the second floor of the house and she has set up her office on the third floor and her possession has been recognized by this court vide order dated 07.07.2011 in F.C.A.M.P.Nos.193 & 278 of 2011 in F.C.A.No.80 of 2011.

17. The contention of the accused is that, undisputedly, A-2 is the owner of the building and he had entered into lease agreement with a public limited company viz., M/s Krishna Godavari Power Utilities Limited on 01.04.2010 in respect of the premises admeasuring 400 sq. ft in ground floor and 2000 sq.ft in third floor, total admeasuring 2400 sq. ft. at house bearing No.8-2-203/82/A/265/N (old No.8-2-293/82/A), situated at Road No.10, Jubilee Hills, Hyderabad. As such, the alleged office

premises in third floor was never in the exclusive possession of the complainant. The orders of this court in Crl.R.C.No.41 of 2011 would fortify their contention that as on 19.05.2011 i.e., the date of alleged incident, the complainant was not in exclusive possession of the office premises on third floor.

18. Further, a perusal of the order dated 12.01.2011 in Crl.R.C.No.41 of 2011, order of this court dated 19.04.2011 in F.C.A.M.P.Nos.166, 167 & 168 of 2011 in F.C.A.No.80 of 2011 and order dated 20.11.2011 in Crl.M.P.No.1302 of 2010 in D.V.C.No.274 of 2010 makes it clear that on the date of incident i.e., 19.05.2011, the complainant was not in exclusive possession of the property bearing 265/N, situated at Road No.10, Jubilee Hills, Hyderabad. There is no dispute that the entire property i.e., the house building was under the ownership of A-2 and the copies of the lease agreement also probalilise that the said premises and part of the ground floor premises was given on lease to M/s Krishna Godavari Power Utilities Limited by entering into lease agreement dated 01.04.2010.

19. Apparently, though this court has given a finding in its order dated 07.07.2011 in F.C.A.M.P.Nos.193 & 278 of 2011 in F.C.A.No.80 of 2011 that the complainant had office accommodation on the third floor of the schedule building and, therefore, the complainant was entitled to injunction to continue her office in the third floor in the same room in which she was having her office, but the fact remains that the said order is subsequent to occurrence of the alleged incident. As on the date of the incident, the material on record discloses that the complainant was not in exclusive possession of the alleged premises. As the property stands in the name of her father-in-law (A-2), A-1 and A-2 trespassing into the said premises does not arise at all.

Sections 380 and 427 IPC:

The essential ingredients of theft in dwelling house under Section 380 IPC are as under:

- (i) Dishonest intention to take property;
- (ii) The property must be movable;
- (iii) The property should be taken out of the possession of another person;

- (iv) The property should be taken without the consent of that person;
- (v) The theft is committed in any building, tent, or vessel, which is used as human dwelling or, use for custody of property.

The point of distinction between theft in dwelling house etc., and mischief is that when a person commits mischief (Section 427 IPC), he only causes loss to another, but he does not gain anything himself, while in theft, he makes a wrongful dishonest gain of property at the expense of the victim. In the instant case, the allegations in the complaint disclose that the accused is alleged to have committed theft of books, files, both professional and personal, files relating to pending cases, journals, computers, printers, furniture etc. However, in view of the finding of this court that the alleged premises was not in exclusive possession of the first respondent-complainant and still the removal of the articles and shifting them to the ground floor do not *prima facie* constitute the ingredients of the offence of theft in a dwelling house, as A-2 is none other than father-in-law of the complainant and owner of the premises and A-1 is her husband. The removal of the said articles cannot be attributed to any dishonest intention for causing wrongful loss to the complainant and wrongful gain to the

accused and it might have happened for *bona fide* exercise of the right of occupation of A-2, as contended by the petitioners. Therefore, even if the allegations in the complaint are taken at their face value and accepted, they do not *prima facie* constitute any offences, much less the alleged offences under Section 380 and 427 IPC.

20. For the foregoing reasons and after considering the facts and circumstances of the case and on a careful scrutiny of the allegations in the complaint, it appears that the complainant had filed spate of civil and criminal cases against the petitioners and also the present complaint is with an oblique motive. Therefore, this case squarely falls into the parameters of guidelines of **BHAJAN LAL's** case (*supra*). It is, therefore, considered a fit case to invoke the inherent powers of this Court under Section 482 Cr.P.C and quash further proceedings against the petitioner/A-1 to prevent the abuse of process of law.

21. The criminal petition is, accordingly, allowed. The proceedings against the petitioner/A-1 in Cr.No.250 of 2011 of Jubilee Hills Police Station, Hyderabad, are hereby quashed.

22. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

23.08.2022

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