

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.2358 of 2021

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioners/A1 and A2 in PRC No.12/2021 on the file of XII Additional Metropolitan Magistrate, Cyberabad at Kukatpally.
2. Charge sheet was filed by the Kukatpally Police for the offences under Sections 307, 447, 427, 323, 192, 193, 209, 211 r/w 34, 109, 120-B of IPC against petitioners.
3. The case of the prosecution is that the 2nd respondent originally filed a complaint under Section - 200 of Cr.P.C. before the XII Metropolitan Magistrate, Cyberabad at Kukatpally, and the learned Magistrate had referred the same to P.S. Gachibowli under Section - 156 (3) of Cr.P.C. for investigation and report. Accordingly, P.S. Gachibowli registered a case in Crime No.643 of 2020 against the petitioner herein and accused Nos.1 and 2 for the aforesaid offences and after investigation filed charge sheet and numbered as P.R.C. No.12 of 2021. During the course of investigation, it was revealed that the complainant is having

land in Survey No.90/2, Gachibowli and neighbouring plots are owned by accused Nos.1 to 3.

4. According to charge sheet Accused Nos.1 to 3 started making illegal efforts to grab 10 feet wide road on the southern side of properties. When the complainant prevented the accused from doing so, accused No.1 threatened him with dire consequences that they would cause harm with anti-social elements. Further, on 21.09.2019, accused No.1 and his men criminally trespassed into 30 feet wide road which is on the southern side plots of accused No.1 and the complainant and caused harm to the complainant. Accused No.1 abused the complainant in filthy language and assaulted him. Men of Accused No.1 beat LW.3, driver of the complainant. Accused No.1 is highly influential person and tried to attack the complainant personally with the help of his men by moving the container onto him with an intention to eliminate him using a crane bearing No.TS 07FY 3187 while he was standing in the vicinity.

5. At that time, when LW.3 intervened in the matter so as to save the complainant, accused No.1 and his men beat him. Accused No.1 also threatened the complainant with dire consequences by using foul words as “*Ne Amma*”, “*Lanjakodaka, Nee Anthu Chustanu*”, “*Ninnu Lepasthanu*”. Later on 05.03.2020, accused Nos.2 and 3 went to the site, looked at the complainant and accused No.2 abused him in filthy language and threatened with dire consequences saying that “*Neve Theliviklavadiya, Nenu Chepta, Na husband and Nenu gun petti lepasthanu*”, then accused No.3 also abused him saying as “*Ninnu murder chepistnu, emianukuntunnavu* etc., and further threatened that they would grab his land. Accused No.1 filed a complaint before Gachibowli Police Station vide FIR No.520 of 2019, dated 21.09.2019, with an intention to cause harm to the complainant, but ultimately it was referred to as “lack of evidence”.

6. The complainant also complained to the GHMC Authorities against accused No.1 about the encroachment of 10 feet wide road out of 30 feet on southern side of Plot No.4. On which, the GHMC Officials along with Demolition Squad

visited the scene and demolished the encroachment done by accused No.1. Again in the month of October, 2020, accused No.1 encroached into the said road by erecting stones. Then, GHMC authorities demolished the said encroachment.

7. The Zonal Commissioner clarified that their office has issued LRS Approval for Plot No.A1, 1B and 1C in Survey No.90/2 to an extent of 4015 square meters vide proceedings No.LRS26092017121114, dated 26.09.2017 in favour of M/s. Shri Lakshmi Ganapathy Paper Mills Limited represented by its Managing Director, the complainant, on verification of documents and spot inspection, in which width of the road mentioned as 215 feet wide road towards northern side of plot No.1B; 215 feet and 80 feet wide roads were shown towards northern and western sides respectively for plot No.1A; and 30 feet wide road was shown towards southern side of Plot No.1C. Keeping the above in their mind, accused Nos.1 to 3 have created nuisance and tried to eliminate the complainant by Crane. Even, accused No.1 and others are restrained by way of *interim* injunction passed in I.A. Nos.2480 and 2481 of 2019 in O.S. No.634 of 2019 by the learned V Additional Junior Civil

Judge, Kukatpally, and the said orders are still subsisting. The investigation done by the Investigating Officer would reveal that accused Nos.1 to 3 have committed the aforesaid offences and accordingly he filed the charge sheet for the said offences against them.

8. The 3rd accused preferred W.P.No.7211 of 2021. The allegation against A3 was that he along with 2nd petitioner herein have trespassed into the premises of the 2nd respondent on 05.03.2020 and abused the 2nd respondent in filthy language. However, this Court in W.P.No.7211 of 2021 found that the allegation against A3 was false and accordingly quashed the proceedings. Since, the 2nd petitioner/A2 was also present along with A3, relying on the findings of this court, the proceedings against A2 are liable to be quashed. This Court had found that the incident alleged to have been happened on 05.03.2020 when A2 and A3 together abused the 2nd respondent was false.

9. However, the allegation against A1/1st petitioner is that he trespassed into the land of 2nd respondent on 21.09.2019 and also tried to eliminate him with the help of container. It is further stated in the charge sheet and also the statement of the 2nd respondent that there is video recording regarding the entire incident. Since the

prosecution claims that the entire episode was video recorded, this Court deems it appropriate to direct the concerned trial Court adjudicate on the subject matter on the basis of evidence produced by both the prosecution and the defence.

10. Learned counsel appearing for the petitioner relied on the judgments of the Hon'ble Supreme Court in the case of **Jaswant Singh v. State of Punjab**¹ wherein the Hon'ble Supreme Court had quashed the proceedings under Sections 406 and 420 of IPC finding that no case is made out. Learned counsel also relied on the judgment of Hon'ble Supreme Court in the case of Usha Chakraborty v. State of West Bengal², the Hon'ble Supreme Court quashed the proceedings against the petitioners therein finding that the issue is civil in nature and the same was pending adjudication in the competent Civil Court.

11. There is no dispute regarding the principle laid down in the aforesaid judgments. However, on facts, the same are not applicable to the facts in the present case on hand. In the present case, the allegation is that the petitioner along with others tried to cause death of the 2nd respondent by moving container on to him and there is video to that effect. This Court under Section 482 of

¹ (2021) 6 S.C.R.1100

² 2023 LiveLaw (SC) 67

Cr.P.C cannot go into the video to infer the intention of A1 in the said proceedings. Further the video was not produced before this Court. Admittedly, there is an altercation on 29.09.2019, wherein A1/1st Petitioner was involved.

12. In the result, the proceedings against A2 in PRC No.12/2021 on the file of XII Additional Metropolitan Magistrate, Cyberabad at Kukatpally, are hereby quashed. However, the concerned Court shall proceed against A1.

13. Accordingly, the Criminal Petition is allowed in part. Consequently, miscellaneous applications pending, if any, shall stand closed.

Date: 28.02.2023
kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

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Dated: 28.02.2023

kvs

