

ANDHRA PRADESH HIGH COURT**Bench: Justice Tarlada Rajasekhar Rao****Date of Decision: 20th November 2023**

CRIMINAL PETITION NO. 4200 OF 2019

B SIVA SANKAR REDDY ...PETITIONER**VERSUS****B SRINIVASUL REDDY ...RESPONDENT****Legislation:**

Sections 447, 324, 506 of the Indian Penal Code (IPC)

Section 156(3) of the Criminal Procedure Code (Cr.P.C.)

Subject: Criminal petition arising from allegations of criminal trespass, assault, and threats, involving a property dispute and delayed FIR registration.

Headnotes:

Criminal Trespass and Assault – Allegations of trespassing and assault by petitioner on respondent's land, leading to a physical altercation and subsequent police complaint. Charge sheet filed under Sections 447, 324, 506 IPC in Kalakada Police Station. [Paras 2, 4, 14-15]

Delayed FIR and Private Complaint – Delay in FIR registration (FIR No.33 of 2016 dated 28.06.2016) attributed to police inaction, necessitating a private complaint by respondent. Judicial Magistrate of First Class referred the complaint under Section 156(3) Cr.P.C. [Paras 3, 11, 17]

Affidavit Requirement in Private Complaints – Discussion on the necessity of an affidavit in support of a complaint under Section 156(3) Cr.P.C., referencing the Supreme Court judgment in Priyanka Srivastava case. Uttarakhand High Court’s view on non-filing of affidavit as a curable defect considered. [Paras 5, 7-9]

Property Dispute and Criminal Charges – Existence of a civil dispute (O.S. No.111 of 2017) over property ownership does not negate criminal charges. The charge sheet’s assertion of respondent’s possession of the property underpins criminal trespass allegations, despite the title dispute. [Paras 13, 16]

Decision – Criminal Petition No. 4200 of 2019 dismissed by Andhra Pradesh High Court. The proceedings in C.C. No.135 of 2018 against petitioner will continue. [Para 20]

ORDER:

The petitioner and 2nd respondent herein are accused and defacto-complainant in C.C. No.135 of 2018, respectively.

2. The 2nd respondent herein has filed a private complaint to the Judicial Magistrate of First Class, Vayalpad, for not receiving the report made by the 2nd respondent herein, by the police. Therefore, he was constrained to file a private complaint with the following allegations stating that on 28.06.2016 while agricultural labourers carrying out weeding operations by removing

fallen trees located in Survey No.344, the petitioneraccused criminally trespassed into the land of the complainant/2nd respondent by armed with sickle and proclaimed that the trees are not owned by the 2nd respondent herein and the petitioner-accused made an attempt to hack the complainant on his neck and the workers, some other persons who gathered by seeing the quarrel, forcibly pushed the petitioner and snatched the sickle from his hand and thereafter, the petitioner-accused was handed over to Kalakada Police Station. The accused being politically influenced, the police has not registered the crime against him.

3. The Judicial Magistrate of First Class, Vayalpad, has referred the said complaint to the police under Section 156 (3) of Criminal Procedure Code. Thereafter, the police has registered the crime on the reference made by the learned Judicial Magistrate of First Class vide F.I.R. No.33 of 2016 dated 28.06.2016 for the offences under Sections 447, 324, 506 IPC and accordingly laid a charge sheet in the following manner.
4. The 2nd respondent herein is the owner of land in Survey No.278 in an extent of Ac.5.16 cents and he raised mango, guava and coconut trees in the said survey number land and he also has landed property in Survey No.346 in an extent of Ac.9.00 cents. Out of Ac.9.00 cents, his grandfather sold away an extent of Ac.1.76 cents in Survey No.346 to the grandfather of the petitioner-accused and till date the land was not subdivided and towards the northern side of the land in an extent of Ac.7.30 cents is in the possession of the 2nd respondent herein. There is a civil case pending in the Court of Judicial Magistrate of First Class, Vayalpad vide O.S.No.111 of 2017. In order to avoid electric shock, as some of the trees were touching the electric wires, he removed the trees with JCB and sold away the trees to one Saheb Peer of Gurrakonda and on 28.06.2016 while picking up the tree logs, the

petitioner-accused questioned him for cutting the trees and wordy altercation took place in between them and they pushed each other and the accused took sickle it was laid in the land of 2nd respondent herein and threatened to do away the 2nd respondent herein and both quarrelled each other, on hearing the cries, people gathered and intervened and got separated them and in the said process, the petitioner-accused has received dump injuries and he went to Government Hospital and he also lodged report vide crime No.33 of 2016 and the police has registered crime under Sections 447, 324 and 506 IPC at Kalakada Police Station and later the 2nd respondent herein has faced trial and urged to quash the charge sheet to take cognizance of the offences under Sections 447, 506 IPC and to punish the petitioner-accused herein.

5. The said charge sheet was registered as C.C. No.135 of 2018 on the file of Judicial Magistrate of First Class, Vayalpadu and the same was vociferously canvassed in the Criminal Petition on the grounds viz;

(1) Learned Magistrate ought not to have referred the complaint to the police, as the 2nd respondent herein has not given affidavit which is mandatory in view of the judgment of Priyanka Srivastava and another v. State of Uttar Pradesh and others¹, the Hon'ble Supreme Court has held that filing of the affidavit mandatory when an complaint filed under Section 156(3) of Criminal Procedure Code, as soon as it is preferred before the Court, it could not have been even entertained until and unless it is accompanied with an affidavit in support thereto.

(2) The incident has taken place on 28.06.2016 and the FIR was registered on 06.04.2018. Therefore, there is a delay in lodging the FIR.

¹ (2015) 6 SCC 287

- (3) There is a civil dispute pending in between the petitioner-accused and the 2nd respondent herein and the ingredients of Sections 447 and 506 IPC would not attract as per the charge sheet as there is a dispute with regard to the title of the property in between the petitioner-accused and the 2nd respondent herein vide O.S. No.111 of 2017.
- (4) The other ground that is raised is that the petitioner herein filed a Criminal Case against the 2nd respondent herein for the similar offences and the said case after due trial ended in conviction, in order to wreak vengeance the present complaint is filed. Hence, he would pray to quash the proceedings by relying on the judgment of the Apex Court in State of Haryana and another v. Bhajanlal and another².
6. On the aforesaid grounds, it is urged to quash the C.C. No.135 of 2018 on the file of the Judicial Magistrate of First Class, Vayalpadu.
7. The first ground that it is canvassed is that: as per the Hon'ble Apex Court Judgment while referring the complaint to the police under Section 156(3) Cr.P.C. filing of an affidavit which is mandatory, unless and until it is accompanied with an affidavit in support there to, the Magistrate cannot refer the matter to the police. The object of filing of affidavit is to ensure that the complainant must face consequences if the submissions therein are found to be false.
8. Learned counsel appearing for the 2nd respondent herein would submit that non filing of the affidavit is curable defect and the Magistrate can obtain such affidavit from the complainant at any stage of case and he relied on the judgment of the Uttarakhand High Court in Commercial Toyoto through its General Manager Sales Sri Abhinav Khosla v. State of Uttarakhand and

² 1992 Supp. 1 SCC 335

another ³, wherein the said judgment, the Court has observed by distinguishing the judgment of Priyanka Srivastava case that non filing of affidavit is a curable defect which can be filed during the course of the trial and the Magistrate has to be held responsible with the conditions laid down therein is not complied with for which the Defacto Complainant cannot be made to suffer wherein the Magistrate is not insisted or observed that the complaint has to support with an affidavit as contemplated by the judgment of the Priyanka Srivastava case referred supra on the principle that the act of the Court shall prejudice no man.

9. In view of the said contention raised by the 2nd respondent, non filing of the affidavit is only a curable defect and as held by the Uttarakhand High Court referred supra (3), in Commercial Toyota case, the act of the Court shall prejudice no man.

10. In view of the said observation, this Court finds that on the said ground, the present C.C. No.135 of 2018 cannot be quashed.

11. The 2nd ground, that canvassed by learned counsel for the petitioner accused, is that there is a delay in registering the crime. In this context, this Court would like to refer decision of the Hon'ble Apex Court in Jitender Kumar v. State of Haryana⁴, in which it was held that "It is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases" In the present case, the incident took place on 28.06.2016, thereafter, the 2nd respondent herein made a complaint to the police on the same day, but the police refused to registered the FIR, as such the 2nd respondent herein made a complaint to the Superintendent of Police on 06.07.2016, later he filed a private complaint on 27.07.2016 and the same was referred to the police vide despatch No.782 of 2016 dated 16.08.2016

³ 2019 SCC OnLine Utt 749

⁴ (2012) 6 SCC 204

and the police has registered the crime on 06.04.2018, there is no delay on the part of the 2nd respondent herein in filing the complaint, the delay was occurred cannot be attributed to the 2nd respondent herein.

12. In view of the judgment of the Apex Court referred supra, the delay cannot be a ground to quash the proceedings under Section 482 Criminal Procedure Code.
13. The other ground that canvassed is that there is a civil dispute pending between the petitioner-accused and the 2nd respondent herein, the Hon'ble Apex Court in Dr. Lakshman v. State of Karnataka and others⁵ has held that it is not permissible for High Court any application under Section 482 of Criminal Procedure Code to record any findings, wherever there are factual disputes. That even any dispute of civil nature where there is allegation of breach of contract, there is any intent of breach of trust with mens rea, it gives rise to a criminal prosecution as well merely on the ground that there was a civil dispute, criminality involved in the matter cannot be ignored.
14. In the present case, the police has laid the charge sheet alleging that the 2nd respondent is in the possession of the property under Section 441 of IPC defines Criminal Tress Pass.

“Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “Criminal Trespass”. The punishment offence is under Section 447.

⁵ (2019) 9 SCC 677

15. In charge sheet it was specifically asserted that a Criminal Case was registered against the 2nd respondent herein vide Crime No.33 of 2016 under Section 427, 324 and 506 IPC by Kalakada Police Station.
16. As per the quoted Section 441 whoever enters into another property who is in possession is an offence under Section 441 IPC. Even assuming that there is a title dispute in between the petitioner-accused and 2nd respondent herein, the police has laid the charge sheet that the 2nd respondent herein is in the possession of the property. Therefore, it shall presume that the 2nd respondent is in the possession of property unless it is disproved. Ingredients of the Section squarely applicable to the allegations mentioned in the charge sheet. Therefore, the contention raised by the petitioner-accused that there is a civil dispute in between the petitioner-accused and 2nd respondent is liable to rejected, as the allegation categorically shows that the 2nd respondent herein is in the possession of the property.
17. In the present case, both the petitioner-accused and 2nd respondent herein separately lodged reports to the police. However, for the best reason known to the police, have not received the report filed by the 2nd respondent herein, as such the 2nd respondent has sent a report to the Superintendent of Police being no action, the 2nd respondent herein constrained to file the private complaint for necessary action against the petitioner-accused herein. In the aforesaid circumstances it cannot be said that the present complaint has been filed for wreaking vengeance against the petitioner-accused herein.
18. As discussed above, mere pendency of a civil dispute is not a ground to quash the proceedings.
19. In view of the discussion supra, this Court found no grounds to quash the proceedings in C.C. No.135 of 2018.

20. Accordingly, the Criminal Petition is dismissed.

As a sequel, interlocutory applications, pending if any shall stand closed.

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