

(2021) 08 TEL CK 0023
In the Telangana High Court
Case No : Criminal Petition No. 4280 Of 2019

Midhun Kumar Allu

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 173, 482
Indian Penal Code, 1860 — Section 406, 420, 506, 506I
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(r), 3(1)(s), 3(2)(Va)

Citation : (2021) 08 TEL CK 0023

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") to quash the proceedings in

Crime No.98 of 2019 of Mirchowk Police Station, Hyderabad Commissionerate.

2. The petitioner herein is accused No.1 in the above crime. The offences alleged against him are under Section - 506 of IPC and Sections - 3 (1) (r),

3 (1) (s) and 3 (2) (Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act, 1989").

3. Heard the petitioner, party-in-person and learned Assistant Public Prosecutor appearing on behalf of respondent Nos.1 and 2, and also Mr. M.

Yadagiri, learned counsel for respondent No.3.

4. It is relevant to note that on the complaint dated 05.07.2019 lodged by respondent No.3, P.S. Mirchowk, had registered a case in Crime No.98 of

2019 against the petitioner herein and accused No.2 for the aforesaid offences. After completion of investigation, the Investigating Officer has filed a

final report under Section - 173 of Cr.P.C. dated 14.11.2019 referring the case as 'lack of evidence'. Learned Assistant Public Prosecutor has filed copy of the said final report.

5. The petitioner, party-in-person, accused No.1 in the above crime, referring to the contents of the contents of the final report would submit that the present criminal petition filed under Section - 482 of Cr.P.C. is maintainable since the Investigating Officer has filed the final report referring the matter as 'lack of evidence' instead of 'false'. The petitioner would contend that the contents of the complaint lacks the ingredients of offences alleged against him and the allegations made therein are absurd in nature. The Investigating Officer instead of filing final report treating it as 'false in nature' referred the same as 'lack of evidence'. He has placed reliance on the principle laid down in *Joseph Salvaraj A. v.*

State of Gujarat (2011) 7 SCC 59. Therefore, according to him, cause still survives in the present criminal petition.

6. On the other hand, learned Assistant Public Prosecutor, on instructions, would submit that the Investigating Officer has recorded the statement of respondent No.3 - de facto complainant as LW.1 and her daughter, A. Maneesha as LW.2. Since the place of incident is at City Civil Court's

Premises, Hyderabad, the Investigating Officer tried to examine other witnesses, who were present in the Court on the date of incident, but he could

not secure the presence of any eye-witness. No-one supported the version of respondent No.3. Therefore, considering the statements of LWs.1 and 2

and also the report of the Tahsildar, Marpally Mandal, Ranga Reddy District, the Investigating Officer after obtaining permission from the Additional

Commissioner of Police, Crime and SIT, Hyderabad City, referred the case as 'lack of evidence'. There is no error in the said final report.

Respondent No.3 herein having lodged the complaint failed to produce relevant evidence in support of her case. Respondent No.3 did not cite any

eye-witness to the incident. Thus, there was no-one to support the version of respondent No.3. In view of the same, the Investigating Officer referred

to the matter as 'lack of evidence' and, therefore, the contention of the petitioner that the Investigating Officer instead of filing the final report

treating it as 'lack of evidence', should have filed the final report stating that 'the complaint is false' is unsustainable. In view of filing of

the said final report, learned Assistant Public Prosecutor sought to dismiss the present criminal petition treating the matter as infructuous.

7. Mr. M. Yadagiri, learned counsel for respondent No.3, would submit that the Investigating Officer did not serve the copy of final report on

respondent No.3 so as to enable her to file protest petition. According to him, the Investigating Officer has not conducted investigation in a fair and

transparent manner. Respondent No.3 has approached the Telangana State Commission for SCs/STs, who, in turn, referred to the complaint to the

police, Mirchowk. Though the contents of the complaint, statements of respondent No.3 (LW.1) and her daughter (LW.2) constitute the offences

alleged against the petitioner herein, the Investigating Officer has filed the final report referring it as "lack of evidence". Thus, according to him,

the Investigating Officer has not conducted the investigation in a fair and transparent manner and filed the final report with an intention to help the

petitioner herein.

8. In reply, the petitioner, referring to the contents of the plaint and written statement in O.S. No.1269 of 2015 pending on the file of V Senior Civil

Judge, City Civil Court, Hyderabad, would submit that he has filed the said suit for recovery of money and damages for deceit and the contents of the

written statement filed by respondent No.3 are contrary to the contents of the complaint as well as her statement recorded under Section - 161 of

Cr.P.C. by the Investigating Officer. He would further submit that a suit vide O.S. No.70 of 2021 on the file of X Additional Chief Judge, City Civil

Court, Hyderabad, is filed for perpetual injunction against respondent No.3 and her daughter and the same is pending.

9. The above said submissions would reveal that there are civil disputes between the petitioner and respondent No.3 with regard to sale of Flat

No.102, Sai Residency constructed in the premises bearing M.Nos.1-1-18/43, 1-1-18/44, 1-1-18/45/6 and 1-1-18/46, situated at Industrial Housing

Colony, Jawahar Nagar, Chikkadpally, Hyderabad. The petitioner filed a suit vide O.S. No.1269 of 2015 against respondent No.3, her husband and

SBH and the same was decreed on 14.10.2019. Challenging the same, no appeal is filed as of now. Thus, the proceedings in O.S. No.1269 of 2015

have attained finality. There is also another case pending between the parties vide O.S. No.70 of 2021.

10. In Joseph Salvaraj A.1, respondent No.4 - complainant has lodged a complaint against the appellant therein - accused alleging criminal breach of trust and cheating and the police have registered a case for the offences under Sections - 406, 420 and 506 Part-I of IPC. On examination of facts therein, the Honâ??ble Supreme Court held that the complainant acted only as a mediatory and contents of the complaint, prima facie, would show that there was no cheating or dishonest inducement for the delivery of property or breach of trust by the appellant therein. It is purely a civil dispute sought to be given colour of criminal offence to wreak vengeance against the appellant therein. Thus, the Apex Court quashed the FIR against the accused therein.

11. The Apex Court further held that from the general conspectus of the various sections under which the appellant therein is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant therein were prima facie made out from the complainant's FIR, charge sheet, documents etc., or not. The matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by the Apex Court in Devendra v. State of U.P. [2009 (7) SCC 495].

12. The Apex Court has also extracted the relevant portion in Devendraâ??s Case that ""A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."" But, the facts of the said case are different to the facts of the present case.

13. In the present case, respondent No.3 has specifically alleged that the

petitioner herein, accused No.1, used her caste name, insulted and threatened her in the presence of people outside the Court, that he would see their end and no-one can touch him as he is an Advocate. The petitioner has started shouting and threatening her daughter also. It is further specifically mentioned in the complaint that "you are the backward class persons, should not do anything of my brother and me". Since the contents of the complaint, prima facie, constitute offences under Section - 506 of IPC and Sections - 3 (1) (r), 3 (1) (s) and 3 (2) (Va) of the Act, 1989, the Police, Mirchowk, registered the above crime. Thereafter, on recording the statements of respondent No.3 as LW.1 and her daughter as LW.2, the Investigating Officer has filed the final report referring the same as "lack of evidence". Therefore, the petitioner, party-in-person, cannot claim that the Investigating Officer instead of filing the final report treating it "lack of evidence", should have filed it as "false". The said contention of the petitioner, a practicing Advocate, is unsustainable. Thus, according to this Court, in view of the filing of final report under Section - 173 of Cr.P.C. in Crime No.98 of 2019 of Mirchowk Police Station, dated 14.11.2019, the cause in the present petition does not survive and it becomes infructuous.

14. The present Criminal Petition is accordingly dismissed as infructuous.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.