

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.9575 OF 2021

Between:

Vishal Lalwani

... Petitioner

And

Donta Santosh Kumar and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED:

17.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No.9575 of 2021

% Dated 17.08.2023

Vishal Lalwani

... Petitioner

And

\$ Donta Santosh Kumar and another

... Respondents

! Counsel for the Petitioner: Sri T.S.Anirudh Reddy

^ Counsel for the Respondents: Public Prosecutor for R2

>HEAD NOTE:

? Cases referred

¹ (2014) SCC 357

² 2016 SCC OnLine Bom 12682

³ Criminal M.C.No.4477 of 2019, dated 17.10.2022.

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.9575 OF 2021****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against petitioner in C.C.No.12106 of 2021 on the file of II Additional Chief Metropolitan Magistrate, Hyderabad.

2. The petitioner is arrayed as A4. The case of the defacto complainant who worked as Surveyor of GHMC, Goshamahal, Hyderabad is that on 29.08.2020 at 5.30 p.m, he along with other officials went to 'You & Me' cloth show room, at door No.5-9-742/1 to 13 and served notice. The notice was for demolition of old buildings. Notices were served and after taking acknowledgments from other shop owners, while leaving the office, suddenly A1 and other shop owners dragged the complainant and others into You & Me show room and snatched the documents and abused in filthy language. On the basis of the said complaint, police investigated the case and filed charge sheet against four persons including this petitioner.

3. Learned Senior counsel appearing for the petitioner would submit that there are no specific overt acts which are attributed to this petitioner. He is a Post-Graduate student and nothing is specifically stated in the complaint as to how the petitioner is liable for any of the offences. He further submits that the alleged notice dated 21.08.2020 was signed at 6.34 p.m and the complaint was lodged at 8.25 p.m.

4. In the complaint filed by the defacto complainant/2nd respondent, it is mentioned that A1, who is the owner, after serving notices to the shop keepers in the complex, the said shop owners gathered and pushed them into You & Me shop and snatched the cell phone. The details of the persons, who gathered or shop owners is not mentioned either in the final report or charge sheet. The name of this petitioner is also not mentioned in the complaint nor does the statement of complainant reveal that this petitioner along with A1 and others had snatched the documents.

5. Petitioner is not named in the Complaint nor is any description given about him. In the absence of any specific

allegations against this petitioner, none of the ingredients of the offences are made out. To attract an offence under Section 353 of IPC, it has to be shown that any public servant was obstructed from discharging his official duty. No such allegation is made against the petitioner. According to the complaint, notices were acknowledged and thereafter A1 had assaulted the 2nd respondent. The question of extortion does not arise, since there is no passing of any money or property to any of the accused.

6. The Hon'ble Supreme Court in the judgment reported in the case of **Isaac Isanga Musumba and others v. State of Maharashtra and others**¹ held that unless there was delivery of property, no offence of extortion is made out. In the judgment reported in the case of **Kundan v. K.Vasudeo and another**², it was held that any shouting cannot be termed as assault when no specific force was used against the public servant. In **P.V.Mathai v. State of Kerala and another**³, the High Court of Kerala, while

¹ (2014) SCC 357

² 2016 SCC OnLine Bom 12682

³ Criminal M.C.No.4477 of 2019, dated 17.10.2022.

quashing the proceedings against the accused, held that when there is no allegation of assault or use of criminal force or when nothing is specifically alleged regarding the acts done by the accused therein, the offence under Section 353 of IPC would not be attracted. In the present case, there are no overt acts attributed to this petitioner in any manner. Mere presence at the scene will not entail criminal prosecution unless oral evidence and the complaint make out any of the ingredients of the penal provisions under Sections 342, 353 and 384 of IPC.

7. In the result, the proceedings against the petitioner in C.C.No.12106 of 2021 on the file of II Additional Chief Metropolitan Magistrate, Hyderabad are hereby quashed.

8. Accordingly, Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 17.08.2023

Note: LR copy to be marked

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.9575 OF 2021

Dt. 17.08.2023

kvs