

**IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE CUM
METROPOLITAN MAGISTRATE, MEDCHAL MALKAJGIRI DISTRICT.**

PRESENT : SMT. POOJA KANDUKURI

**Principal Junior Civil Judge cum
Metropolitan Magistrate,
Medchal Malkajgiri District.**

Friday, this the 23rd day of December, 2022

C.C. No. 1530 OF 2020

Between:

The State of Telangana
Through SHO, PS Malkajgiri.

... Complainant

A N D

- A1) Ch.Pratap Reddy S/o.Raja Reddy, Aged : 50 years, Occ : Contractor worker
in post office, R/o.H.No.13-135/3, Sanjay Nagar Colony, Malkajgiri
- A2) Ch.Swapna W/o.Pradeep Reddy, Aged : 45 years, Occ : Housewife,
R/o.H.No.13-135/3, Sanjay Nagar Colony, Malkajgiri.

... Accused no.1 & 2

This case has come up before me on 11.11.2022 for final hearing in the presence of Learned Assistant Public Prosecutor and Sri B.Srinivas, Advocate, Learned Counsel for the accused no.1 and 2. The matter having stood over for consideration to this day, this Court delivered the following:-

J U D G M E N T

1. This present complaint is lodged by the Defacto complainant/Cherukuthota Laxma Reddy against his brother and sister-in-law i.e., Ch.Pratap Reddy and Cherukuthota Swapna alleging commission of the offence of trespass and criminal intimidation.
2. It is alleged that the defacto complainant is owner of house No.13-135/3, Sanjay Nagar Colony, Malkajgiri, Hyderabad. That on request of his brother and sister-in-law i.e., the accused no.1 and 2 he allowed them to stay in front portion situated on the first floor of the

property. That the defacto complainant is stays abroad and the accused no.1 and 2 started getting greedy about the property and they started threatening the tenants and also their mother who used to stay in one of the portions to leave the house. That due to the harassment of the accused, his parents left the portion and started staying somewhere else. That the defacto-complainant had come to India to look after his father who was bed ridden and on 12.07.2020 at 9.00AM he went to the above property and saw that his brother and sister-in-law i.e., accused no.1 and 2 had trespassed into his portion which he had kept for himself and broke open the locks of the door removed the electric fuses on the current meter and broke the taps with intention to damage the building with water leakage. That he had already filed suit for eviction against accused no.1 and 2 herein vide OS No.777/2019 on the file of Hon'ble Malkajgiri Court and that as they had tried to trespass into his portion previously also he had filed two complaint against them and the same were registered as FIR No.120/2019 and FIR No.217/2020. With these allegations, he prayed to take action against both the accused.

3. Upon filing of this complaint, Police Malkajgiri registered an FIR in Crime No. 506/2020 against accused nos.1 and 2 for the offences under sections 448, 427, 506 r/w.34 of Indian Penal Code. The I.O. examined and recorded the statement of the defacto complainant, his mother and one other witness and conducted scene of offence panchanama. After completion of investigation charge sheet was filed against the accused no.1 and 2 under section 448, 427, 506 r/w.34 of IPC.
4. This Court took cognizance against accused no.1 & 2 for the offences under section 448, 427, 506 r/w.34 of IPC and issued summons to them. On appearance they were examined under section 239 Cr.P.C. Charges for the offences under section 448, 427, 506 r/w.34 of IPC were framed, read over and explained to them in vernacular language. They pleaded not

guilty and claimed to be tried. Trial was conducted during which 5 witnesses were examined documents were marked. After completion of prosecution evidence, accused were examined under section 313 Cr.P.C. They denied the entire incriminating evidence deposed against them by the prosecution witnesses and reported no defense evidence.

5. I have heard both the sides. Now the point for determination is :-

Whether prosecution has proved guilt of the accused no. 1 & 2 for the offences under section 448, 427, 506 r/w.34 of Indian Penal Code beyond reasonable doubt ?

6. In order to prove the guilt of the accused for the offences under section 448, 427 and 506 of IPC, prosecution shall prove that the accused no. 1 and 2 had trespassed into the property of the complainant, committed mischief which caused damage to the complainant for an amount of more than Rs. 50 and that they have cause criminal intimidation to him. In support of the prosecution case, the de-facto complainant was examined as Pw-1. His mother who is also the mother of accused no. 1 was examined as PW-2. PW-3 is an independent eye witness. The panch for the scene of offence is examined as PW-4 and the Investigating Officer is examined as PW-5.

7. The following are the essential ingredients of trespass

- i. The property must be in the possession of the complainant/victim
- ii. The accused must have entered into the property which is in possession of the complainant/victim
- iii. The accused shall have intention to commit any offence or have intention to intimidate, insult or annoy the complainant/victim (or)

- iv.** If the accused had entered into the property lawfully, he shall have remained in it unlawfully with the intention to commit any offence or with intention to intimidate, insult or annoy the complainant/victim
- 8.** The house in dispute is H. No. 13-135/3, Sanjay Nagar Colony, Malkajgiri. First contention of the complainant is that the house was owned by mother of the de-facto complainant and it was gifted to him by his mother vide a registered gift deed. On perusal of the entire evidence, it appears that accused is disputing the ownership of PW-1 in respect of this property. It is admitted by the accused that their mother is the original owner of the house. The accused counsel has given suggestion to the de-facto complainant/PW-1 and also to their mother/PW-2 that an oral partition of all the properties owned by the parents has taken place and in the oral partition, H.No. 13-135/3 (house in dispute) was allotted to the accused no. 1 and other properties were allotted to the other children. This suggestion was denied by both the witnesses. They were also given suggestion that out of the properties, H. No. 10-164/2 was allotted to the de-facto complainant/Pw-1 and this was also denied by both of them. Contrary to this suggestion, accused counsel gave another suggestion to the de-facto complainant/Pw-1 that his father had sold away H. No. 10-164/2. The de-facto complainant was given another suggestion that he forcefully took his parents to the registration office and got the gift deed executed in his favour. Again, this suggestion was also denied.
- 9.** When it is admitted by the accused that the house in dispute i.e., H. No. 13-135/3, Sanjay Nagar Colony, Malkajgiri belongs to the mother of the de-facto complainant and accused no. 1 and the mother/Pw-2 herself has categorically deposed that she voluntarily gifted it to the de-facto complainant, it conclusively proves the right and title of the complainant over the house. The contention of the accused that he is the owner and that the de-facto complainant

is not the owner and that the de-facto complainant/Pw-1 forcefully got executed the gift deed in his favour is untenable and rejected.

10. The next contention of the complainant is that on request of the accused no.1 and 2, he allowed them to stay in the front portion in the first floor of the house and with intention to grab the property and with intention that the complainant nor their mother should get any rents, they started disturbing the tenants and forced all the tenants to vacate and they also started harassing their parents due to which their parents also left the premises and further that they damaged the property and did not allow them to induct any tenant into the premises.
11. The accused no.1 and 2 have lawfully entered into the property. However, they were in lawful possession of only one portion of the property. All the other portions were in control of the de-facto complainant and his parents. Infact, their parents were staying in one of the portion and as per evidence given by the de-facto complainant/Pw-1, they were harassed by the accused and forced to vacate the premises. There are three other portions which were given for rent and the de-facto complainant gave evidence that the accused created lot of nuisance for all the tenants and drove them away. He further deposed that the accused used to damage the taps, electric fuse, bore motor and water tank in the premises and they used to leave the water pipe open and put it under the door of one of the portions which was locked and they used to damage a lot of the property to make sure that none of the tenants choose to stay there.
12. The reason for filing this case as stated by Pw-1 in his evidence is that on 12-07-2020, a prospective tenant by name Naveen i.e., Pw-3 herein had called the complainant for taking a look at the premises and as such, he had gone to the house and on verification, he found that

accused no.1 and 2 had changed the locks of the portion which was supposed to be given on rent and when he questioned the accused about it, they abused him in filthy language. Pw-2 also gave evidence about this fact and said that on 12th of July, they received a call from a prospective tenant and when they went to the premises, accused no. 2 verbally abused them and she also beat her with her hands by claiming that the entire property belongs to them and that the accused had also changed the locks which were put by them and as such, they approached the police. The evidence of Pw-1 and Pw-2 with regard to all the material aspects about the incident is in corroboration with each other. In addition to this, the prospective tenant by name Naveen who had come to see the house on 12-07-2020 was examined as witness Pw-3 . He gave evidence that there was to-let board at the house and he had called the de-facto complainant/Pw-1 whose number was mentioned on it and fixed the appointment for seeing it and accordingly on that day at 10:00 Am, he went to the above mentioned house for taking a look at it. He identified both the accused and said that on that day, the accused no. 1 and 2 were fighting with their mother and father and that the accused had also warned him not to come into the premises and they had also threatened him with dire consequences if he stepped into the premises.

- 13.** Learned counsel for the accused argued that there are contradictions between the evidence of Pw-1 and Pw-2 with regard to the alleged incident. That the complaint was lodged by Pw-1 but Pw-2 had deposed that she and her husband had lodged the complaint. Further that Pw-1 had not mentioned about the presence of his parents at the scene of offence on 12-07-2020 and he also did not mention about accused no. 2 beating Pw-2 in the incident. That in view of these contradictions, prosecution evidence cannot be believed beyond reasonable doubt.

14. Every witnesses cannot be expected to depose in the similar way and evidence of all the witnesses cannot be expected to be line to line in corroboration with each other. What is to be see is whether on a comprehensive reading of the evidence of the witnesses, it appears that there is reasonable doubt that the alleged incident has not happened. Whoever has lodged the complaint, the facts remain the same. Pw-1 is the own son of Pw-1 and just because Pw-2 said that she lodged the complaint, it does not discredit her entire evidence deposed by her.
15. This case is between family members. The complainant and accused are none other than own brothers. Pw-2 is their mother and earstwhile owner of the property. When both the parties are her children and she has given evidence in favour of one of the child and against the other child, her evidence holds a lot of importance and credibility. Ordinarily a parent can never be biased towards one child to the extent that she harms the other child. Considering the fact that Pw-2 has given evidence against her own son, her evidence is bound to contain some truth in them. Further, Pw-3 is an independent witness and no way associated with the de-facto complainant. Nothing is established in the cross examination of Pw-3 which shows that he has personal acquaintaince with the de-facto complainant or that he has some previous grudge against the accused. Hence, his evidence also holds the utmost credibility.
16. The evidence of the de-facto complainant that the accused have changed the locks of one of portion and that they drive away all the tenants from the property is believable when corroborated with the evidence of Pw-3 that accsued have threatred him that if he enters into the premises, they will see his end. Further, accused themselves admitted that there is a suit for eviction filed against them by the de-facto complainant. This itself constitutes the offence of trespass. The fact that complainant has filed a suit for eviction against them is

sufficient to hold that the complainant wanted the accused to leave the premises and that accused are staying in the premises illegally to annoy the complainant. The fact that the accused is claiming a title over the said property inspite of Pw-2 executing gift deed in favour of the def-acto complainant and the fact that accused had filed a suit for partition of this house (As contended by him during cross examianation of Pw-1) and the fact that they refuse to vacate the premises inspite of filing suit for eviction show motive on part of the accused to grab on to the property one or the other way. Hence, I hold that all the essential ingredients of section 448 of IPC are established against the accused no. 1 and 2 and accused are liable to be convicted for this offence.

17. The other offences which are alleged against the accused is that of mischief under section 427 and criminal intimidation U/Sec.506. It is alleged that while staying in the premises, accused have damaged a lot of the articles in the premises including the bore motor, electricity connection, taps, etc. After lodging of the complaint, a scence of offence panchanama was conducted by the police in the presence of two mediators and rough sketch map was drawn. One of the mediators was examined as Pw-4. He gave evidence that on 12-07-2020, at 12:00 Pm, the police had conducted scene of offence panchanama in his presence in Sanjay Nagar colony and drew rough sketch map and that he had affixed his signature on the scence of offence panchanama. The witness was cross examined by the accused counsel but he was only given suggestion that he is deposing false and that he was not present at the time of conduction the panchanama. These suggestions were denied. As per the panchanama, the electrical meter in the ground floor and first floor and the water connection pipe in the first floor were found damaged. As it the accused who were in possession of the property, any damage to any property therein is presumed to be caused on their account. It is not required to calculate the value of the damaged property to determine

whether it will fall within section 427 IPC as it will definitely be more than fifty rupees. Hence, i hold that prosecution has also established beyond reasonable doubt that accused have committed the offence under section 427 of IPC and they are entitled to be convicted for this offence also.

18. But coming to the offence under section 506 IPC, in order to constitute this offence, there shall be an apparent threat given by the accused and a mere statement or action by the accused in the course of argument etc. without an actual threat does not constitute such an offence. In this case, there does not appear to be any such apparent threat and as such, i hold that the offence under section 506 of IPC is not established against the accused.

19. Before concluding the judgment, it is pertinent to note that the evidence of the Investigating officer in this case is only formal in nature. He has only deposed that he received the complaint, registered FIR, examined the witnesses, conducted panchanama and filed charge sheet. The investigation is routine in nature and has no complications or technicalities which need to be explained by the I.O. In his cross examination also, accused counsel has not brought out any lacune in the investigation which are fatal to the case or which doubt the incident itself. Hence, his evidence was not required to be discussed at length at any relevant portion.

20. IN THE RESULT, accused no. 1 and 2 are found guilty for the offences under section 448 and 427 of Indian Penal Code and they are convicted under section 248(2) CrPC. They are found not guilty for the offence under section 506 of Indian Penal Code and they are acquitted for this offence under section 248(1) CrPC.

21. Accused are heard on quantum of sentence. They stated that due to family disputes, the complainant filed false case against them. On considering the facts and circumstances of the case, I am not inclined to apply the provisions of Probation of Offenders Act. The accused no.1 and 2 are hereby sentenced to pay a fine of Rs. 1,000/- each for the offence under section 448 of Indian Penal Code and they are sentenced to pay a fine of Rs. 6,000/- each for the offence under section 447 of Indian Penal Code. Total fine amount which comes upto Rs. 14,000/- shall be given to the de-facto complainant in lieu to compensation under section 357 CrPC. There is no case property. On enquiry accused no.1 and 2 have reported that they have got sufficient means to engage a counsel of their choice to prefer appeal.

Typed by me on my personal laptop, corrected and pronounced by me in the Open Court on this the 23rd day of December, 2022.

**Principal Junior Civil Judge cum
Metropolitan Magistrate
Medchal Malkajgiri District.**

**:: Appendix of Evidence ::
Witnesses Examined**

Prosecution :

1. PW1 : Ch.Laxma Reddy
2. PW2 : Ch.Madhuramma
3. PW3 : Naveen
4. PW4 : P.Shaillesh
5. PW5 : J.Venkat Reddy

Defence :

-NIL-

EXHIBITS MARKED

Prosecution :

1. Ex.P1 : complaint
2. Ex.P2 : Signature of PW4 on panchanama
3. Ex.P3 : FIR
4. Ex.P4 : Crime Detail Form

Defence :

-NIL-

**Principal Junior Civil Judge cum
Metropolitan Magistrate
Medchal Malkajgiri District.**