CONVERSION OF CIVIL LITIGATION INTO CRIMINAL LITIGATION

By

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The Legislatures enacted many enactments for the benefit of the public. Mainly the disputes of the litigant public are two types and almost all the disputes of the litigant public can be called under two categories *i.e.* civil law and criminal law. Several Acts were enacted under civil law like so under the criminal law. It is settled law that there shall not be any interference by the police under civil matters unless there is specific direction given by the civil Court for example, if there is any violation of injunction orders, then only upon the application of the plaintiff/ petitioner police aid would be granted. Granting of police aid is to implement the orders of the civil Court. To implement orders of the civil Court the civil Court is taking aid of the police. But we know pretty well that how the police aid is misused by the litigant public and thereby horse is being converted into an ass and *vice-versa.*

It is well settled in various pronouncement of the apex Court and various High Courts that the police shall not interfere in the civil matters. In our own A.P. High Court one Superintendent of Police, Guntur was called to High Court and an explanation was sought by the Hon'ble High Court about the intervention of police in that district in settlement of civil disputes. That itself shows the seriousness of the aspect that the police shall not interfere in the civil litigation.

In my 12 years of experience as judicial officer and prior to it as an Advocate I came across several instances where the police have settled/solved the civil litigation. With all my little experience, I want to share my thoughts among all the judicial fraternity to solve this problem of conversion of civil litigation into criminal litigation. In twin cities and Ranga Reddy District there are also boards displayed by the police at police stations that they will not settle civil cases and they will not entertain the civil matters. It appears that the higher officials of the Police Departments also given instruction to the police not to entertain civil disputes, but if the Court directs them, then there will be no other go for them to entertain the civil matters *i.e.*, if the party files a private complaint into the Court by engaging advocate by using terminology/ language which will suit to their complaint in making sufficient allegations in constituting an offence, then the Court will automatically refer the said case to the concerned police under Section 156(3) Cr.P.C and then the civil litigation converted into criminal by litigant will be asked to be investigated by the police with the directions of the Court. Then the police will interfere into that case and they will settle the case or solve in their own way, which ultimately helps the complainant in settling the case.

For example : 1) One *Subba Rao* borrowed money from *Laxman Rao* for a sum of Rs.1 lakh and executed a promissory note and subsequently, *Laxman Rao* demanded *Subba Rao* to pay the amount, but *Subba Rao* is not paying the amount, then said *Laxman Rao* approached one clever Advocate, who advised him to file the complaint instead of filing of the suit and who cleverly drafted the complaint ingredients under Sections 427, 448 and 506(1) IPC stating that *Subba Rao* came to the house of *Laxman Rao* and threatened him not to demand money, if any

demand is made further he will kill him for which there may not be any medical evidence or any other clinching evidence except the statement of *Laxman Rao* then the Court will refer the matter to concerned P.S. and subsequently the matter will be referred to police under Section 156(3) Cr.P.C. then the police will settle the dispute. Though ultimately *Laxman Rao* was succeeded in getting amount from *Subba Rao* with the help of the Court, but the settlement of the matter by the police is not correct in the eye of law.

Example 2 : One *Rama Rao* lent a sum of Rs.1 lakh to *Appa Rao* in the month of March 2003, but subsequently inspite of repeated request *Rama Rao* could not able to recover the amount from *Appa Rao* even after lapse of three years. *Rama Rao* is not entitled to recover the amount from *Appa Rao* by filing a suit because of the point of limitation *i.e.*, the suit is to be filed within three years from the date of the execution of promissory note, but as within the time as *Rama Rao* could not able to file the suit, he approached a clever Advocate, who cleverly drafted a complaint without mentioning the dates about the legally enforceable debt, but by mentioning the technical language employed in Sections 448 and 506(1) IPC ultimately the Court referred the matter to the police under Section 156(3) Cr.P.C., there he could able to settle the dispute and could able to recover the money from *Appa Rao*, which is not valid in the eye of law. These type of instances were happening frequently. The above two examples which I mentioned are not hypothetical or not myth and they are happening in every day in all the Courts.

Why I am mentioning above example is, in my career several instances have come to my notice that the disputes under specific performance of contracts were also settled in the police station with the help of police. The people without approaching the civil Court they are settling their disputes with police with the aid of the Court which the police are not expected to help in solving the civil disputes. Thereby the civil litigation is converted into a criminal litigation and ultimately the civil litigation is being settled by way of criminal litigation. If we allow this type of practice near in future, I am afraid that there will not be any work in the civil Courts and the work will be pending in the police stations only and not even in the criminal Courts.

To curb the above practice the entire judicial fraternity has to think of how it has to be corrected. In my view, I would like to add the following points :

1. The criminal Courts shall make their endeavour not to refer all the matter to the police under Section 156(3) Cr.P.C. and the Court must proceed with the case under Section 202 Cr.P.C. Thereby, I am sure that the filing of the fictitious private complaint will be reduced.

2. If the Courts were given wide powers to impose penalty against the complainants, who filed false private complaints, thereby also the people will be afraid and the fake private complaints will not be filed. In other words a section like 357 Cr.P.C. can be brought into Cr.P.C.

3. If any matter was settled by the police, the complainant must be penalized or asked to pay costs to the Government for misusing Government machinery, which they are not expected to do as provided under law, it does not mean that the police are hired gundas and it also does not mean that by taking the amount the police can settle the disputes or the party can be benefited by depositing or by paying the costs to the Government he can easily settle his civil disputes with the aid of the police.

4. More care should be taken by the Courts, which ultimately will deprecate the

practice of filing of false private complaint. The people must be aware that they shall not file a false private complaint into the Court, if they file a complaint into Court they will be penalized.

5. The Court must take all steps, if the witness turned hostile, he must be prosecuted for giving or deposing false evidence before the Court.

Why, I am also adding the point No.5 is that because there may be some offences which are not compoundable one wherein police might have filed charge-sheet, but the matter might have been settled in the P.S. itself. Because of the nature of the offence those offences cannot be compounded in such cases naturally the *defacto*-complainant will turn hostile and in such cases the Court has to take steps for prosecution against such witnesses for deposing false evidence in this Court.

If all the above aspects were being followed it will ultimately give burden to the Court *i.e.* recording of the sworn statements and penalizing the complainant for filing of the false case and prosecuting the hostile witness, these are all additional burden to the Court, but one thing is to be remembered, the Courts are established to do justice to the needy people, who approached and knocked the door steps of the Court. We cannot settle the disputes or we cannot adjudicate their claims without following the procedure established under law. "Justice is not only be done, but it must also seems to have been done." Lastly the Legislatures must think why this problem has come up in my view if the civil cases are being disposed off within the stipulated time then the litigant public will also feels that they can solve their problem under civil law without approaching the other methods. In this regard, I sincerely invite the comments from the entire judicial fraternity.

DOCTRINE OF ELECTION VERSUS FUNDAMENTAL RIGHTS UNDER PART III OF THE CONSTITUTION OF INDIA

By

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1. In legal jurisprudence the doctrine of election often comes to be implemented while interpreting provisions of various statutes. The doctrine of election is a rule of estoppel. It is an obligation imposed upon a party by the Court of equity to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both and that he, who accepts a benefit under a deed must adopt the whole contents of the instrument. In other words, if a person has two means or remedies open to him under an enactment to achieve a particular relief, he is given the option to pursue one of the two remedies only but not the two remedies simultaneously. The said remedies may be available in the same Act or under different Acts, but if the goal is common under the two different Acts, the beneficiary must have to elect one remedy only at his choice but he cannot take advantage of both the releifs, given to him under the same