

HON'BLE SMT. JUSTICE ANIS
CRIMINAL PETITION No. 3946 OF 2012

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ORDER:

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This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 by the petitioners/A.1 to A.5 requesting to quash the proceedings in F.I.R. No.220 of 2012, dated 11.04.2012 on the file of Chanda Nagar Police Station, Cyberabad.

2. The case of the petitioners is that the 1st petitioner is an Engineer by profession and has been executing the work of petitioners 2 to 4. The 5th petitioner is a permanent resident of Tirupathi and has nothing to do with the land covered by Survey No.12 of Chanda Nagar Village, Serilingampally Mandal, R.R. District or land covered by Survey Nos.288, 289, 291/part, 292/A, 292/AA, 293/A and 293/AA of Chanda Nagar Village, Serilingampally Mandal, R.R. District. The petitioners 2 to 4 are law abiding citizens and hail from respectable family with good and cultured social perspective.

The 2nd petitioner is authorized to represent petitioners 3 and 4. The petitioners have been wrongly shown as accused in the FIR filed at the instance of 2nd respondent in Crime No.220/2012 under Section 447 of the Indian Penal Code, 1860 (for short 'IPC') and under Sections 3 and 4 of the

A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act, 1982).

The petitioners 3 and 4 are the absolute owners and possessors of the land to an extent of Ac.5.3 guntas having purchased under Survey Nos.288, 289, 291/Part, 292/A, 292/AA, 293/A and 293/AA of Chanda Nagar Village, Serilingampally Mandal, R.R. District through Registered Sale deed Nos.7484/95, 7634/95, 7635/95, 8248/95 and 8053/95, dated 13.07.1995. As owners and possessors of the lands, petitioners 3 and 4 have obtained permission from GHMC for

construction of compound wall all along the open land covered by the above survey numbers. The 1st petitioner No.1 was entrusted by the petitioner No.2 with the work of surveying, marking, cleaning and levelling the land as preparatory work to ultimately take up construction of compound wall on behalf of petitioners 3 and 4. The petitioners with a view to enclose the open land belonging to them, have undertaken the assigned work on 08.04.2012 only in Survey No.288, etc. The petitioners have neither traversed beyond their open land covered by survey numbers read above nor in any manner dumped debris, etc. into Cheruvu covered by Survey No.12 of Chanda Nagar village. On account of refusal on the part of the petitioners to yield to the blackmail threats of local reporters, a press item was published on 10.04.2012. The 2nd respondent/*de facto* complainant without verification of revenue records and surroundings of cheruvu, under a mistake of fact and law filed a complaint before the Chanda Nagar Police Station, Cyberabad on 11.04.2012. In the complaint it was alleged that the 1st petitioner, purporting to execute work in land covered by survey number No.288, etc., has been carrying out the work in tank covered by Survey No.12 of Chanda Nagar Village by dumping debris and trying to occupy the same. The *de facto* complainant alleged that a panchanama was conducted on the site. The petitioners have paid Rs.3,21,000/- to GHMC towards part of development charges for construction of compound wall and permission was granted on 04.06.2010. While granting permission, the authorities have taken note of existence of cheruvu on southern side and maintaining the required set back between the green belt area and the open land of the petitioners. The proposed construction of compound wall is well within the land owned and possessed by the petitioners 3 and 4 and in accordance with the permission granted by GHMC, Hyderabad. The land use certificate clearly sets out the use of Survey Nos.288, etc. belonging to petitioners 3 and 4 as residential

use. When the compound wall construction is undertaken on their land and in accordance with the law, the alleged act of criminal trespass under Section 447 IPC does not arise and constructing a compound wall all along the land is an integral part of their proprietary right, as such action does not amount to land grabbing and prayed the Court to quash the petition.

3. The learned counsel for the petitioners argued that the petitioners are constructing the compound wall around their land after obtaining permission from GHMC on 04.06.2010; that the petitioners are the absolute owners of the Survey Nos.288, 289, 291/Part, 292/A, 292/AA, 293/A and 293/AA of Chanda Nagar Village, Serilingampally Mandal,

R.R. District admeasuring Ac.5.3 guntas having purchased under Registered Sale deed Nos.7484/95, 7634/95, 7635/95, 8248/95 and 8053/95, dated 13.07.1995 for a valid consideration and to protect their land, the 1st petitioner who is an Engineer by profession has been entrusted the work of surveying, marking, cleaning and levelling the land and to construct the compound wall around Ac.5.3 guntas covered in the above said survey numbers; that the M.R.O.

(2nd respondent) failed to consider the documents filed by the petitioners and got filed the present false case with a view to cause loss to the petitioners; that the allegations in the complaint given by the 2nd respondent do not constitute the commission of any offence much less the offence under Section 447 IPC read with Section 3 and 4 of the Act, 1982 and continuation of the said complaint is abuse of process of Court; that the *de facto* complainant make general and omnibus allegations implicating all the petitioners even against the 5th petitioner who is a permanent resident of Tirupathi and having nothing to do with the land; that when the third petitioner sought for permission for construction of a compound wall to the Commissioner, GHMC on 22.10.2009, the authorities addressed a letter to the

3rd petitioner asking her to remit an amount of Rs.3,21,925/- towards building permit fee and sub-division charges and on paying the said amount, vide Permit No.5/5, the permission was accorded and the petitioners never encroached the land situated in Survey No.12; that instead of considering the documentary evidence filed by the petitioners, the MRO got issued a false complaint and prayed the Court to quash the FIR in Crime No.220 of 2012.

The learned counsel relied on a case-law reported in *Rajinder and others Vs. State of Haryana*^[1], wherein the Hon'ble Supreme Court held at Para 20 and 21 as follows:

“On a plain reading of the above section it is patently clear that the right of private defence, be it to defend person or property, is available against an offence. To put it conversely, there is no right to private defence against any act which is not an offence. In the facts of the instant case the accused party was entitled, in view of Section 97 and, of course, subject to the limitation of Section 99, to exercise their right of private defence of property only if the unauthorised entry of the complainant party in the disputed land amounted to "criminal trespass", as defined under Section 441 I.P.C. The said Section reads as follows:

Whoever enters into or upon property in the 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".

It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed.”

The learned counsel also relied on a case-law reported in *Abid Vs. State of Uttar Pradesh*^[2], the Hon'ble Supreme Court held at Para 20 and 21 as follows:

“On a plain reading of the above section it is patently clear that the right of private defence, be it to defend person or property, is available against an offence. To put it conversely, there is no right of private defence against any act which is not an offence. In the facts of the instant case the accused party was entitled, in view of Section 97 and, of course, subject to the limitation of Section 99, to exercise their right of private defence of property only if the unauthorised entry of the complainant party in the disputed land amounted to "criminal trespass", as defined under Section 441 IPC. The said section reads as follows:

Whoever enters into or upon property in the 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'.

It is evident from the above provision that unauthorised entry into or upon property in the possession of another or unlawfully remaining there after lawful entry can answer the definition of criminal trespass if, and only if, such entry or unlawful remaining is with the intent to commit an offence or to intimidate, insult or annoy the person in possession of the property. In other words, unless any of the intentions referred in Section 441 is proved no offence of criminal trespass can be said to have been committed. Needless to say, such an intention has to be gathered from the facts and circumstances of a given case. Judged in the light of the above principles it cannot be said that the complainant party committed the offence of "criminal trespass" for they had unauthorisedly entered into the disputed land, which was in possession of the accused party, only to persuade the latter to withdraw thereupon and not with any intention to commit any offence or to insult, intimidate or annoy them. Indeed there is not an iota of material on record to infer any such intention. That necessarily means that the accused party had no right of private defence to property entitling them to launch the murderous attack. On the contrary, such murderous attack not only gave the complainant party the right to strike back in self-defence but disentitled the accused to even claim the right of private defence of person.”

The learned counsel also relied on a case-law reported in *Kumar Debasish Vs. State of Orissa and another*^[3], the Hon'ble Supreme Court held at Para 9 and 13 as follows:

“Applying the aforesaid principles of law to the facts of the instant case, as the petitioner (accused) had admittedly

entered into the tenanted premises as a tenant on payment of monthly rent, the provisions of Section 441 I.P.C. (Orissa Amendment) cannot be made applicable as the same cannot act as a weapon in the hands of the landlord (complainant) to harass a tenant whose tenancy has been determined by issue of notice. Moreover, in view of the pendency of the civil suit between the parties for specific performance of contract in respect of the tenanted premises, the complainant cannot be permitted to utilise the criminal Court as a weapon of harassment or prosecution. Similarly, the offence of "house trespass" as defined in Section 442 I.P.C., cannot be made applicable to the facts of the present case.

In view of the discussions made above, I feel that continuance of the criminal proceeding against the present petitioner under Sections 447/448 I.P.C. in G.R. Case No. 214 of 2001 pending in the Court of J.M.F.C.(R), Cuttack is an abuse of process of Court and accordingly the same is quashed."

The learned counsel also relied on a case-law reported in *Maharashtra State Electricity Distribution Company Limited and another Vs. Datar Switchgear Limited and others*^[4], the Hon'ble Supreme Court held at Para 18 as follows:

"It is well settled that though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the Court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. (See: R.P. Kapur v. State of Punjab : AIR 1960 SC 866 and Rupan Deol Bajaj and Anr. v. Kanwar Pal Singh Gill and Anr. : (1995) 6 SCC 194))."

The learned counsel also relied on a case-law reported in *Asmathunnisa Vs. State of A.P., rep. by the Public Prosecutor, High Court of A.P., Hyderabad and another*^[5], the Hon'ble Supreme Court held at Para 12, 13 and 24 as follows:

“This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under Section 482 of the Code of Criminal Procedure. Inherent power under Section 482 Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

The law has been crystallized more than half a century ago in the case of *R.P. Kapur v. State of Punjab* : AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under Section 482:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In *State of A.P. v. Gourishetty Mahesh and Ors.* : (2010) 11 SCC 226, this Court observed that the power under Section 482 of the Code of Criminal Procedure is wide but has to be exercised with great care and caution. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under Section 482 of the Code.”

The learned counsel finally argued that Sections 3 and 4 of the Act, 1982 cannot be invoked and prayed the Court to allow the petition and quash the FIR in Crime No.220 of 2012, dated 11.04.2012 on the file of Chanda Nagar Police Station, Cyberabad.

4. On the other hand, the learned Public Prosecutor argued that the 2nd respondent/*de facto* complainant, who is working as Tahsildar, Sherilingampally Mandal, lodged a complaint to the police

that the petitioners under the guise of Sale deeds tried to encroach Pedda Cheruvu situated in Survey No.12 of Chandanagar village by dumping the gravel and stones from their land; that there is every likelihood to trespass the land with an intention to encroach Pedda Cheruvu; that the investigation is not yet completed and prayed the Court to dismiss the petition.

5. Now, the point for determination is –

Whether the petitioners are entitled to quash the FIR in Crime No.220/2012 on the file of Chanda Nagar Police Station, Cyberabad?

6. **Point:**

A perusal of the record shows that the 2nd respondent/*de facto* complainant, who is working as Tahsildar, Serilingampally Mandal, lodged a complaint on 11.04.2012 to the Station House Officer, Chandanagar Police Station stating that the petitioners are dumping boulders and gravels into Pedda Cheruvu of Chandanagar village, which is covered by Survey No.12. Basing on the said complaint, the police registered a case in Crime No.220 of 2012 for the offence punishable under Section 447 IPC and under Sections 3 and 4 of the Act, 1982.

7. The contention of the learned counsel for the petitioners is that registering of crime under Sections 3 and 4 of the Act, 1982 is illegal and contrary to Sections 11 and 12 of the Act, 1982 and further, land grabbing arises only after finding given by the Special Court or Tribunal basing on the allegation of grabbing which is pleaded and proved before it, and therefore, the 2nd respondent/*de facto* complainant has no jurisdiction to register the complaint directly under the provisions of special enactment. However, there is no dispute about the said contention that the Special Court under the Act, 1982 has to decide and gave a finding that there is a land grabbing,

but the police under Sections 3 and 4 of the Act, 1982 are not empowered to register the case against the petitioners. Therefore, the contention of the petitioners to that effect is sustainable and the FIR is liable to be set aside with regard to the offence punishable under Sections 3 and 4 of the Act, 1982.

8. The 2nd respondent/*de facto* complainant in his complaint stated that Pedda Cheruvu of Chandanagar village is covered by Survey No.12 admeasuring Ac.61.12 gts. and they found that the petitioner No.1, who is an engineer, is supervising the dumping of Pedda Cheruvu with boulders and gravel on behalf of 2nd petitioner. On the other hand, the contention of the petitioners is that the petitioners 3 and 4 are the absolute owners of Survey No.288, 289, 291/part, 292/A, 292/AA, 293/A and 293/AA admeasuring Ac.5.3 gts. of Chanda Nagar Village of Serilingampally Mandal having purchased the same under registered Sale deeds dated 13.07.1995 for valid consideration and also obtained permission from GHMC for construction of the compound wall along with open land covered under the said survey numbers. The petitioners further contended that the allegation of the 2nd respondent/*de facto* complainant that the petitioners are dumping the gravel and boulders, is false and they never tried to trespass into the said Pedda Cheruvu, which belongs to the Government.

9. A perusal of the documentary evidence shows that the petitioners purchased the land admeasuring Ac.5.3 gts. in different survey numbers under the registered Sale deeds dated 13.07.1995 from the pattadars. As per the permission given by the GHMC, it is clear that the petitioners were granted permission for construction of the compound wall along with the open land. The petitioners filed xerox copies of the title documents along with xerox copy of the plan showing the survey numbers purchased by them and also the exact location of Survey No.12 in which Pedda Cheruvu of Chanda Nagar

village admeasuring Ac.61.12 gts. is situated. A perusal of the plan shows that the land purchased by the petitioners is nearer to Pedda Cheruvu. The Mandal Revenue Officer, after visiting the site location, must have been given the complaint to the police that the petitioner No.1 on behalf of the petitioners 2 to 4 is dumping boulders and gravel in Survey No.12 of Chanda Nagar village.

10. The learned counsel for the petitioners relied upon the case-laws reported in 1 to 5 cited supra and in addition to that, relied on the definition of 'Criminal trespass' as defined under Section 441 IPC, which reads thus:

441. Criminal trespass.- Whoever enters into or upon property in the 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".

11. Keeping in mind the aforesaid principles of law, admittedly, the 2nd respondent/*de facto* complainant is a public servant and working as Tahsildar and he came to know on enquiry that the petitioner No.1, who is working for petitioners 2 to 4, is supervising and dumping the boulders and gravel into Pedda Cheruvu situated in Survey No.12. Basing on the said complaint, the Investigating Officer registered the case for the offence punishable under section 447 IPC. In this case, the investigation is not yet completed and whether the petitioners committed any offence punishable under Section 447 IPC can be made out only after completion of investigation. It is settled principle of law that the Court shall not stifle the legitimate investigation more particularly at the initial stage of investigation. The material available on record is *prima facie* sufficient to investigate into the matter in order to ascertain truthfulness or otherwise of the allegations made in the complaint. Therefore, at this stage, the petitioners are not entitled to quash the proceedings in Crime No.220 of 2012 of Chanda

Nagar P.S., Cyberabad with regard to the offence punishable under Section 447 IPC.

12. Accordingly, the Criminal Petition is allowed in part by quashing the FIR No.220 of 2012, dated 11.04.2012 on the file of Chandanagar Police Station, Cyberabad in respect of offence punishable under Sections 3 and 4 of the Act, 1982. However, it is made clear that the investigation with regard to Crime No.220 of 2012 in respect of offence punishable under Section 447 IPC can be proceeded with against all the petitioners.

13. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 17.04.2015

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[\[1\]](#) (1995) 5 S.C.C. 187

[\[2\]](#) (2009)14 S.C.C. 701

[\[3\]](#) (2009)14 S.C.C. 701

[\[4\]](#) (2009)14 S.C.C. 701

[\[5\]](#) (2009)14 S.C.C. 701