

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8734 of 2015

ORDER:

This Criminal Petition is filed to quash the proceedings in Calendar Case No.254 of 2013 on the file of IV Additional Judicial Magistrate of First Class, Tirupati, Chittoor District, against the petitioner herein, who is accused No.1 in the said calendar case.

2. The petitioner filed a complaint against respondent No.2 herein, who is the *de facto* complainant in C.C. No.254 of 2013, but the police did not take any action against respondent No.2 herein. Later, the petitioner filed a private complaint before IV Additional Munsif Magistrate, Tirupati, and it was referred to the police and it is pending for investigation. In the meanwhile, respondent No.2 filed a complaint and after completion of investigation, the police filed charge sheet before the IV Additional Judicial Magistrate of First Class, Tirupati. The main contention of the petitioner is that he was falsely implicated in the criminal case and he is roaming around the Court on each and every date of adjournment. Therefore, it is an abuse of process of Court and prayed to quash the proceedings in the above said calendar case by exercising power under Section 482 Cr.P.C.

3. Learned counsel for the petitioner while reiterating the contentions, requested this Court to dispense with the presence of the petitioner, who is a retired employee and residing at Kumarnagar, Valmikipuram, Chittoor District, as it is very difficult for the petitioner to attend before the IV Additional Judicial Magistrate of First Class at Tirupati on every date of adjournment. Except that, no other ground is urged before this Court.

4. Learned Public Prosecutor opposed this petition on the ground that there is *prima facie* material on record to establish the offences allegedly committed by the petitioner.

5. According to the petitioner, after his retirement, he purchased the property in 2010 under a registered sale deed dated 05.02.2010, whereas respondent No.1 herein purchased the property in the year 2003 from a different vendor. The present complaint was filed for the offences punishable under Sections 420, 447, 427, 506 r/w 34 IPC. The only contention raised before this Court is that the complaint was filed only to make the petitioner to roam round the Court on each and every date of adjournment by abuse of process of law and that the matter is civil in nature. Except this ground, no other ground is urged before this Court. Whereas, the learned Public Prosecutor contended that by trespassing into the property, the petitioner caused damage to the property and, therefore, there is *prima facie* material to attract the aforesaid offences.

6. A similar situation came up before the Supreme Court in ***Amit Kapoor Vs. Ramesh Chander and another***, wherein the Supreme Court laid down certain guidelines to exercise power under Section 482 Cr.P.C. In another judgment of the Supreme Court in ***Kamlesh Kumari and others Vs. State of U.P. and others***, it is held that the High Court would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. In ***Teeja Devi Vs. State of Rajasthan***, the Supreme Court in the similar situation, held that if the allegations in the F.I.R. *prima facie* disclose a cognizable offence, interference with the investigation is not proper and it could be done only in rarest of rare cases where the Court is satisfied that the prosecution is malicious and vexatious and without thorough investigation, it is not possible or proper to hold whether allegations made by the complainant are true or not, and therefore, at the stage of crime, F.I.R. cannot be quashed. The said judgment pertains to quashing of F.I.R., but the present case is filed to quash the proceedings in the calendar case. Even otherwise, when there is no mala fide intention and the complaint is *prima facie* discloses a cognizable offence, it is difficult to accept the contention of the petitioner at this stage that the complaint is not maintainable and liable to be quashed. In any view of the matter, the investigating agency after investigation collected material against the petitioner to constitute the aforesaid offences alleged. Therefore, only on the ground that it is a case of civil

nature, the charge sheet cannot be quashed and apart from that, the other ground raised is that the complaint is vexatious and it is an abuse of process of law, cannot be decided at this stage. Hence, I find no ground to quash the proceedings in the above said calendar case and the petition is liable to be dismissed.

7. At the end of argument, the learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner before the trial Court. While exercising power under Section 482 Cr.P.C., this Court has got inherent power to issue such direction, but an alternative remedy to move proper application to dispense with his presence before the trial Court is available. Hence, I find that it is not a fit case to issue such direction at this stage.

8 .Accordingly, this Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 30-09-2015

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