

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9223 of 2014

ORDER :

This Criminal Petition is filed by the Petitioners/ accused Nos.1 to 4 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.524 of 2013 on the file of IV Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District, where the learned Magistrate has taken cognizance for the offences punishable under Sections 447, 427, 506 r/w 34 IPC, which is outcome of report of 2nd respondent—de facto complainant in Crime No.33 of 2013 of P.M.Palem Police Station, Visakhapatnam City.

2) The report of the de facto complainant setting the law in motion in registering the Crime supra vis-à-vis the investigation done and filed final report after examination of 6 witnesses by LW.7, who registered and investigated the crime and the final report speaks that LW.2—Kesani Yedukondalu, no other than father of LW.1 claimed purchased 1400 Sq.yds in survey Nos.56/2 and 57/2 of (Pothinamallyyapalem for short 'PM Palem') P.M.Palem, Visakhapatnam under three registered sale deeds vide document Nos.1477/ 2011, 2737 of 2011 and 2865 of 2011 and in peaceful possession and enjoyment by engaging private security for protecting the possession. While so, the accused Nos.1 and 2 having created false documents and sold the property in favour of accused No.3—Kandarpa Krishna Murthy, advocate by profession, when they were interfering with the possession, Kesani Yedukondalu—LW.2 filed O.S. No.1664 of 2010 on the file of VI Additional Senior Civil Judge, Visakhapatnam and got interim order and started constructing compound wall to fix a gate to that site, while construction was going on, on 04.01.2013 at about 10.30 am, accused Nos.3 and 4 and others trespassed into the site and damaged the compound wall by saying that they have purchased the site and threatened with dire consequences from which the de facto complainant stopped the work for two days i.e., 04.01.2013 and 05.01.2013 and resumed on 08.01.2013 and while the

work is in progress at about 10.30 am accused again trespassed into the site and damaged the wall and threatened with dire consequences, that in the course of investigation besides LWs.1 and 2 supra, LW.3 one Gandeti Ramulu claimed as watchman under LWs.1 and 2 to guard the site and LW.4—Gandeti Yellayamma, who is no other than wife of LW.4; to co-operate LW.3 and LWs.5 and 6—P.Gopi and his wife claimed working under LWs.1 and 2 to the alleged occurrence in their presence that is the only material referred from the investigation in filing the final report by police and there is nothing to show any enclosure appended to charge sheet as memo of documentary evidence.

3) The final report states making out the offence under Sections 447, 427, 506 r/w 34 IPC that was taken on file by the learned Magistrate for the offences supra against the accused supra. Impugning the same, the accused Nos.1 to 4 herein filed the present Criminal Petition.

4) The contents in the quash petition filed by the accused Nos.1 to 4 that 1st petitioner is the agreement cum GPA holder from the original owners viz., Neduri Syamala Rao and Neduri Ravi Kumar, who in turn executed the sale deed for the site of 1401.77 Sq.yds with D.No.18-96/A in Survey Nos.56/2 and 57/2 of P.M.Palem, Madhurawada, Visakhapatnam in favour of 3rd petitioner herein vide document No.302P/2006 dated 19.09.2006 for consideration of Rs.21,25,000/-. In fact, the sub-Registrar, Madhurawada raised objection to register the crime, as such the 3rd petitioner herein filed W.P. No.32193 of 2011 before this Court and this Court directed the Sub-Registrar to register the document vide order dated 24.01.2013. Accordingly, the Sub-registrar registered the sale deed on 25.02.2013 as document No.897 of 2013 and 3rd petitioner is claimed as bonafide purchaser.

5) It is claimed that 4th petitioner retired officer in a Co-operative bank, Vizianagaram District is nothing to do with the alleged offence so also the 2nd petitioner but for to say the father of de facto

complainant filed O.S. No.1664 of 2010 against the petitioners 1 and 2 herein for permanent injunction and ad-interim injunction orders granted in I.A. No.1370 of 2010 was ultimately seized its force by closure of the petition on 26.04.2012 to say thereafter there is no injunction even in favour of de facto complainant and his father, 3rd petitioner filed O.S. No.26 of 2013 on the file of IV Additional District Judge, Visakhapatnam against one Reddipalli Anasuya and LW.2, who is father of de facto complainant for permanent injunction in respect of the same property, the same is pending and 3rd petitioner already impleaded as co-defendant in O.S. No.1664 of 2010, thereby both the suits are pending for adjudication. The alleged trespass, mischief and intimidation are false and the private complaint proceedings and final report filed by police are nothing but abuse of process in admitting to avert the civil litigation, thereby sought for quashing of the calender case proceedings.

6) Heard both sides and perused the material on record.

7) As part of the enclosures to the quash petition shows that the petitioners filed registered sale deed dated 19.09.2006 showing 1st petitioner as GPA holder of Neduri Syamala Rao and his son Neduri Ravi Kumar of Hyderabad executed a sale deed in favour of 3rd petitioner —Kandarpa Krishna Murty and one Uppalapati Srirama Raju saying the original owner was Puppala Appala Swamy, the maternal grand father of 1st vendor to an extent of Ac.5.00 gts in S.No.56/2, 57/2 of Pothinamalyypalem Village, Visakhapatnam by way of ex-service man grant in 1965 and the said Puppala Appala Swamy died intestate on 23.04.1983 and later Smt.Neduri Meenakshi, D/o.late P.Appala Swamy filed O.S. No.81 of 1996 for partition and got decree in her favour and the schedule property was vested on the vendors and eversince the vendors are in absolute possession they executed GPA in favour of A1-1st petitioner for the extent of 1401.77 Sq.yds out of 1.25 cents vide registered document No.3347 of 2004 of Sub-registrar, Madhurawada and when it is put for sale to meet the financial needs, the 3rd petitioner and one Uppalapati Srirama Raju agreed to purchase the same for

Rs.21,25,000/- and paid by way of cheques and pay order respectively as mentioned in the sale deed and were put in possession. The boundaries are mentioned as follows:

East : Property sold by Smt.Neduri Meenakshi

South : Property belongs to Sri Appayyalingam

West : Property sold by Sri Puppala Satyanarayana

North : 80 ft wide road

And endorsed not an assigned land survey No and door number for temporary shed in the site described with route map appended of the location of the property. The suit with O.S. No.1664 of 2010 on the file of VI Additional Senior civil Judge, Visakhapatnam, filed by Reddipalli Anasuya, Kesani Edukondalu, Anipeddi Seetharama Prabhoji, Anipeddi Masena Rao and G.Rosaiah commonly against petitioners 1 and 2 herein for perpetual injunction, GPA holder Neduri Syamala Rao and his son Ravi Kumar in favour of K.K.Murthy and U.S.Raju is also with averments of Puppala Appala swamy is the maternal grand father of 1st plaintiff R.Anasuya, an ex-service man who was granted patta for Ac.5.00 gts in S.No.56/2 and 57/2 in the year 1965 and said Puppala Appalaswamy had four children by name Puppala Satynarayana, N.Saradamba, N.Meenakshi and P.Tulasiram and among N.Saradamba is mother of Reddipalli Anasuya; that out of four children of Saradamba including Reddipalli Anasuya the others are Neduri Syamala Rao, Neduri Gopala Rao and Neduri Ramabu, that Saradamba since died intestate her 1/4th share in Ac.5.00 gts devolved on the four children, that so far as the share of Meenakshi another daughter of Puppala Appala Swamy, filed O.S. No.81 of 1996 on the file of 2nd Additional District Judge, Visakhapatnam against the other family members and preliminary decree dated 09.09.1999 passed for 1/4th share to each of four children of Puppala Appala Swamy including Saradamba and Meenakshi, two daughters and advocate commissioner appointed in I.A. No.1806 of 1998 in O.S. No.81 of 1996 for actual partition with metes and bounds on ground and while the final decree proceedings were pending, some of the sharers have started alienations already effected and some were

enjoying respective extents by compromise final decree was passed on 11.10.2004 whereunder A marked share fell to the branch of Puppala Satyanarayana, B-marked property fell to the share of Saradamba, C-marked property fell to the share of Neduri Meenakshi, plaintiff in O.S. No.81 of 1996 and D-marked property fell to the share of P.Tulasi Ram, for each 1/4th share out of Ac.5.00 gts (supra). While so, the three brothers of Reddipalli Anasuya by name Neduri Syamalarao, Neduri Gopala Rao and Neduri Ramabu executed a agreement of sale cum General Power of Attorney in favour of Reddipalli Anasuya selling their cumulative 3/4th share of the branch of Saradamba, one of the four children of Original owner, Puppala Appalaswamy, of B-marked property and it is while in possession and enjoyment of Anasuya, she executed a registered sale deed bearing No.1330 of 1999 dated 16.10.1999 to an extent of 315 Sq.yds to one Ryali Venkata Krishna Rao, an extent of 339 Sq.yds to A.D.Karunakara Raju by executing registered sale deed vide document No.1331 of 1999 and an extent of 176.94 Sq.yds to one Kukkara Satyanarayana by executing a gift deed bearing document No.147 of 2001 dated 30.01.2001, an extent of 1013.30 cents to one Pitchika Appayyalingam and his wife Pitchika Anantapadmavathi by executing a sale deed bearing document No.148 of 2001 dated 30.01.2001 and thereby claimed that 1st plaintiff—R.Anasuya in O.S No.1664 of 2001 got 1/4th share out of A-marked property and her three brothers have no right in the property having already conveyed by execution of GPA in 1997 in favour of R.Anasuya.

8) The plaint further reads one T.Vijaya Kumari filed O.S. No.1144 of 2002 on the file of IV Additional Senior Civil Judge, Visakhapatnam against Anasuya and her brothers for specific performance of the sale agreement dated 09.12.1998 and in the independent contest Neduri Syamal Rao brother of Anasuya claimed that he allegedly given possession of the said piece of land, put up false contest was not acted upon and the same was cancelled on 27.12.2001 as Pilli Ramu—defendant in O.S. No.1144 of 2002 that the suit ultimately ended in dismissal on 01.06.2010.

9) The plaint in O.S. No.1664 of 2010 filed by Anasuya and others including Yedukondalu, who is father of de facto complainant in C.C. No.524 of 2013, further averred that under sale deed dated 21.10.2010 she completely sold the item No.1 of the suit schedule property to other petitioners 2 and 3 i.e., Kesani Yedukondalu and Anipeddi Seetharama Prabhoji and one Jampani Krishnababu and executed two independent sale deeds dated 22.10.2010 conveying item No.2 and item No.3 of the suit schedule property to petitioner Nos.4 and 5 respectively i.e., Anipeddi Masena Rao and G.Rosaiah. It came to know that the defendants i.e., Pilli Papa Rao and Pilli Ramu obtained sale deed dated 30.11.2014 from Neduri Rambabu and in saying it is not valid sale deed, there is no delivery of possession and they have no right to interfere, hence to grant injunction.

10) A perusal of the pleadings itself show that the civil dispute pending long back and the plaintiff itself for bare injunction with cloud on title in saying the brothers of 1st plaintiff claimed cancelled the so-called General Power of Attorney executed in her favour of 1998 and later in 2001 and some of the brothers sold their interest in 2004 or so to the defendants 1 and 2, and the defendants Pilli Papa Rao and Pilli Ramu who are accused Nos.1 and 2 herein and said Ramu sold to accused Nos.3 and 4 as referred supra and even the plaint in O.S. No.1664 of 2010 no way shows any enclosures in proof of actual possession with 1st plaintiff or any of the three plaintiffs and the vendees herein. In fact, accused No.3 herein Kandarpa Krishna Murthy and another Uppalapati Srirama Raju vendees of Neduri Syamalra Rao and his son Neduri Ravi Kumar, filed W.P. No.32193 of 2011 against Sub-Registrar, Madhurawada and the said sub-registrar obtained direction for registration of the sale deed in respect of the property as detailed supra. In fact, O.S. No.26 of 2013 filed by accused No.3, Uppalapati Srirama Raju and Pilli Ramu against the plaintiffs in O.S. No.1664 of 2010 and one J.Krishna Babu for permanent injunction in claiming not to interfere with their possession.

11) The additional material filed by the quash petitioners are certified copies of sale deeds executed by Neduri Syamala Rao and his son Neduri Ravi Kumar through GPA holder Pilli Ramu (A1) in favour of accused Nos.3 and 4 among others and even the part-II CD, the final report and the investigation supra that too the four witnesses allegedly examined i.e., two were workers and two others are watchman under de facto complainant and his father and no witness worth any revenue record in proving they are in possession or on material regarding acts of possession.

12) The three judge bench of Apex Court in ***Ramdev Food Products Pvt. Limited vs State of Gujarat***^[1] particularly in saying at para Nos.32 to 41 referring to earlier expressions of the matter purely of civil nature converted to criminal proceedings not to be justified and in saying there must be a judicial application of mind either in referring the complaint to police for investigation under Section 156 (3) Cr.P.C or in taking cognizance by the learned Magistrate under Section 190 Cr.P.C with reference to private complaint under Section 202 Cr.P.C or police final report under Section 173 Cr.P.C.

13) Having regard to the above, it is purely a civil dispute, thereby the Criminal Petition is allowed and all the proceedings relating to C.C. No.524 of 2013 on the file of IV Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District, are hereby quashed. The bail bonds of the petitioners/ accused Nos.1 to 4, if any, shall stand cancelled.

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

Dr. B. SIVA SANKARA RAO, J

Date:14.10.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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