

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CRIMINAL PETITION No.1233 OF 2012

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ORDER:

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This is a Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) (for short, 'the Code') by the accused 1 to 26 in case in Crime No.677 of 2011 on the file of Gajuwaka Police Station, Duvvada Zone Area, Visakhapatnam requesting to quash the proceedings against them in the said Crime.

2. I have heard the submissions of the learned counsel for the petitioners/accused, the learned counsel for the first informant and the learned Additional Public Prosecutor representing the State. I have carefully perused the material record.

3. The introductory facts, in brief, are as follows:

The first informant by name Sridevi lodged a report dated 19.11.2011 with the Inspector of Police, Duvvada Zone *inter alia* alleging as follows: 'She and one Akula lakshmi, wife of Sreenu, had raised two huts in the Government site by the side of Gedda (mound) in Datta Sai nagar. To the Western side of their huts one Satish of Narsipatnam and his relatives are having their patta land. The said Satish and his relatives, with a view to include the Government land in their patta land, had lodged a complaint with the police against the informant and Akula lakshmi. The police of Gajuvaka had called both the sides and had informed that the matter is of civil nature and hence, the same may be settled through the M.R.O concerned. Subsequently, the Deputy M.R.O and the V.R.O came to the huts of the informant and the said Akula lakshmi. They both had pleaded with the said officers that they are landless poor

persons owning no other properties like lands and houses. On that the said officers had left the place. Subsequently, when the huts started leaking in the year 2010 the informant and Akula lakshmi had constructed walls with bricks and cement and had laid a roof of tin sheets and had started living in the Eastern and Western portions of the sheds. In January 2011, the said Satish of Narsipatnam came to the informant and Akula lakshmi and had claimed that the site over which they had constructed the shed belongs to him. On the enquiries made, it was revealed that it is a Banjar land. While so, on 19.11.2011 at about 10.30 AM the said Satish and about 50 of his followers came to the sheds of the informant and Akula lakshmi and had dragged the informant, her mother Potnuri Vijayalakshmi and her neighbour from out of the sheds and had restrained their movements and snatched their cell phones from them and had threatened to kill them and had behaved in a manner in which they wanted. The said Satish and the other persons, who had accompanied him, removed the sheets and bricks and also the household articles and threw them away and had destroyed the houses and had indulged in acts of rioting and had further threatened the informant and Akula Lakshmi to kill them in case they failed to vacate the sheds. While leaving the place at about 1.30 PM, they had also stated that it is a last warning. Hence, the informant had lodged a report on the same day.' Based on the said report, a crime was registered for the offences punishable under Sections 448, 341, 427 and 506 read with Section 34 of the Indian Penal Code. Therefore, the petitioners/accused filed this petition seeking to quash the proceedings in the said crime.

4. The case of the petitioners/accused as stated in the petition, in brief, is as follows: 'The case of the informant as stated by her to the police is totally false. Even according to her version, at

the first instance when Satish and other plot owners made a complaint against the informant and others, the police had then directed the parties to approach the M.R.O since it is a civil dispute. The averments in the report are far from truth and the facts. In fact, one M/s. R.K.Pati Real Estates Private Limited purchased an extent of 335 square yards in survey No.78/4 situated at Kurmanpalem, Visakhapatnam vide registered sale deed dated 13.12.2006 bearing document No.5935/2006 from one Narender Kumar and since then the said company is in possession of the property by raising AC sheet roofed shed in that land and had appointed a watchman to look after the property and to protect the same from illegal encroachments. While so, on 08.11.2011 the informant along with others had tried to interfere with the peaceful possession of the property of the said Company. Therefore, the said Company had filed a civil suit in O.S. No.289/2011 and also an interlocutory application seeking temporary injunction against the informant and others. One Ruttala Appala Naidu, the Director of M/s. R.K.Pati Real Estates Private Limited asked the petitioners/accused to remove the wall and therefore, they had removed the wall. The accused do not have any idea about the litigation between the parties. On coming to know of the crime registered, the accused have voluntarily surrendered before the Police and were later enlarged on bail. Since the contents of the first information given by the informant are false, the FIR is liable to be quashed as the question of framing a charge against the petitioners/accused does not arise. The contents of the report do not constitute any offences for proceeding further. Hence, any investigation would be a futile exercise.'

5. Now the points for determination in the Criminal Petition are as follows:

1) Whether the petitioners/accused have made out

valid and sufficient grounds for quashing the F.I.R/proceedings against them in case in Crime No.677/2011 of Gajuvaka Police Station, Duvvada Zone, Visakhapatnam registered for the offences punishable under Sections 448, 341, 427, 506 read with Section 34 of the Indian Penal Code?

2) Whether the uncontroverted allegations made in the first information and the evidence so far collected by the Investigating Agency do not disclose *prima facie* the commission of any offences much less the alleged offences and make out any case against the accused/petitioners?

6. POINTS:

6. (a) The introductory facts and the case of the informant/second respondent herein and the case of the petitioners/accused are already stated supra, in detail. The learned counsel for the petitioners/accused reiterated the grounds urged in the criminal petition which are extracted supra while stating the case of the petitioners. Similarly, the learned counsel for the second respondent had reiterated the contents of the report lodged by the informant before the Police.

6. (b) The learned Public Prosecutor would submit that the contents of the first information and the evidence so far collected would show that there is a *prima facie* case for prosecuting the petitioners/accused and that at this stage this Court need not examine either the merits of the matter or appreciate the evidence collected by the police and that there is no merit in the present petition of the petitioners/accused. The learned counsel for the 2nd respondent/informant had also submitted that a plain reading of the

first information would show that the allegations therein make out a *prima facie* case.

6. (c) On the other hand, the learned counsel for the petitioners/accused vehemently contended that the police had once advised the parties by stating that the matter is of civil nature and had directed them to approach the M.R.O concerned and that even according to the case stated by the informant, the M.R.O and V.R.O had subsequently advised the informant and another woman to remove the huts, and that M/s. R.K.Pati Real Estates Private Limited, represented by its Director Ruttala Appala Naidu, is the absolute owner of the disputed property and that the said Company had already filed a civil suit in O.S. No.289/2011 against the present informant, Akula lakshmi and one Karri Ramana on the file of the Court of the learned Senior Civil Judge, Gajuwaka for perpetual injunction in respect of 335 square yards of vacant site with AC sheet roofed sheds at Kurmannapalem (golla) village, Gajuwaka Mandal and that in the said suit an interlocutory application for temporary injunction in I.A. No.634/2011 was already filed and that the trial Court had granted interim injunction on 15.11.2011 and that after receiving the notices in the suit and the injunction order the present first information was filed on 19.11.2011 with false allegations to somehow trespass into the property and make a wrongful gain at the expense of the real owner. He would further submit that the plaintiff company in the said suit engaged the services of the petitioners/accused, who are coolies, to remove the wall and that they had removed the wall, but the petitioners/accused do not know of any dispute between the parties to the suit. Therefore, he prayed that it is a fit case to quash the proceedings in the crime as the matter is purely of civil nature. However, the

learned counsel for the informant would submit that the plaintiff company having filed a civil suit behind the back of the informant and other persons living in the sheds in the disputed site had indulged in serious acts of rioting on 19.11.2011 as stated in the first information and that the persons who had indulged in such lawless activities shall not be granted any relief more particularly when there is a land mafia indulging in illegal activities in the Visakhapatnam District. He would further submit that for demolition of a wall there is no need to engage as many as 26 persons and the said fact would show that the case of the petitioners is false.

6. (d) I have bestowed my attention and I have given earnest consideration to the facts and the submissions. The learned Public Prosecutor had stated that as per the instructions received by him, LWs 1 to 6 were so far examined and that the evidence collected as per the preliminary opinion of the Investigating Agency discloses *prima facie* that the accused in that crime had committed offences punishable under Sections 448, 341, 427 and 506 of the Indian Penal Code but, as the present case is pending, further proceedings could not be taken up by the police. Thus, looking at the matter from the point of view of the facts and law, this Court finds that the uncontroverted allegations made in the first information given to the police and the evidence so far collected in support of the same do disclose *prima facie* the commission of certain cognizable offences and make out a case against the accused/petitioners *ex facie*. Therefore, in the well considered view of this Court, none of the circumstances which are sufficient to quash the proceedings do exist in the present case. The law is well settled that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, that too in rarest of rare cases and the Court will not be justified in embarking upon an enquiry as to the

reliability or genuineness or otherwise of the allegations made in the FIR when the matter is at the stage of investigation. Quashing of the proceedings at the stage of investigation is permissible in a case where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima-facie* constitute any offence or make out a case against the accused. On the application of the above tests, this Court finds that there is no merit in this Criminal Petition.

7. In the result, the Criminal Petition is dismissed.

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

M.SEETHARAMA MURTI, J

19th January 2015

MVA