

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Crl.P.No.2332 of 2015

ORDER :

This application is filed under Section 482 Cr.P.C. to quash Crime No.317 of 2014 on the file of P.S. Zaheerabad Town, Medak District.

2. In the said FIR filed by 2nd respondent on 08.12.2014, the petitioners are accused of having committed offences under Sections 447, 504 and 506 IPC.
3. It is alleged that on 05.12.2014 at about 11:30 hrs the petitioners criminally trespassed into land and house belong to 2nd respondent, committed house trespass after preparation for causing hurt to complainant and his children, threatened to kill him and occupy his house of land in Sy.No.59 of Allipur Village.
4. The counsel for petitioners would submit that petitioners are innocent and it is 2nd respondent who attempted to occupy a *nullah* and since petitioners had opposed the same, this false complaint had been lodged.
5. The correctness or otherwise of the plea taken by respondents is a matter for evidence and unless the fact is investigated by Police, its truth or falsity cannot be established.
6. The counsel for petitioners would also submit that unless there is occupation of the property of 2nd respondent, no offence of criminal trespass under Section 441 IPC is made out. The said provision of law states:

“S.441. 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”.”

7. First part of Section 441 states that if any person enters into or upon property in the possession of another with intent to commit an offence or to annoy any person in possession of such property he is said to commit criminal trespass. It is only the second part which requires the accused to unlawfully remain in possession. The said ingredient is not present in the first part of Section 441. Therefore, it is not possible to accept the contention of counsel for petitioners that the offence under Section 441/447 IPC had not been made out in the complaint.
8. The counsel for petitioners also relied upon the judgment in **Paras Ram v. State**, where the Himachal Pradesh High Court has taken a view that if the accused has a *bona fide* claim of right over land and enters into land in possession of another in exercise of such a *bona fide* claim of right, but without any intention to intimidate, insult or annoy person in possession or to commit an offence, he cannot be convicted of criminal trespass even though he may have no right to land.
9. The principle therein is not in dispute, but the question whether there is a *bona fide* claim of right by petitioners in respect of the property of 2nd respondent is a question of fact which again has to be verified through investigation.
10. In fact, in the present application under Section 482, the

petitioners have denied the incident totally and have said that it is a false allegation. It is also alleged that there are civil disputes between petitioners and 2nd respondent and that on account of such civil disputes this complaint has been lodged. The existence of such civil disputes is also a question of fact which needs to be gone into by police during investigation.

11. Since the allegations made against petitioners in the FIR taken at their face value and accepted in their entirety *prima facie* constitutes offence under Sections 447, 504 and 506 IPC, I am of the opinion that the FIR in question cannot be quashed. Therefore, this Criminal Petition is dismissed.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-04-2015

Ndr/*