

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4177 of 2014

ORDER :

This Criminal Petition is filed by Petitioners/Accused Nos.1 to 3 under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.24 of 2014 on the file of Nallakunta Police Station, Hyderabad registered for the offences punishable under Sections 427, 448, 454, 506, 209, 420, 445, 405, 182, 211, 499 and 500, 120-B read with 34 I.P.C.

2) The averments in the above crime registered at the instance of the 1st respondent/defacto-complainant are that he is the Chief Executive and his wife Ratna Kumari is the Managing Partner of Anuradha Estates entered into a development agreement for construction on payment of full consideration to land owners and after obtaining necessary permission from Municipal Corporation of Hyderabad constructed 144 flats and sold by giving possession to the respective individual flat purchasers. It is further averred that the respective owners having their undivided share formed as an association started unending litigation of malicious and vexatious prosecutions till date causing great wrongful losses to the firm even after confirmation of legal rights of the firm in civil Court, District Consumer Forum, State Consumer Commission by dragging the cases for years and having failed they adopted all illegal activities to prevent the firm from going to further constructions and paying of the loan to the bank which is possible only by sale of parking areas and further constructions. Upon which the 1st respondent presented a complaint before the learned IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and the same was referred to

Nallakunta police station and the same was registered a case in Crime No.167/2007 for the offences punishable under Sections 120-B, 499 and 500 I.P.C. The case was referred as 'civil in nature' on 28.02.2008, the firm protested the final report but it was dismissed without any speaking orders. After that due to some quarrel with the firm about parking, the flat owners filed a complaint in the same Court which was also referred to Nallakunta police Station and registered the same as a case in Crime No.94 of 2008 registered for the offences punishable under Section 448, 506, 120-B I.P.C. It is further averred that the flat owners illegally formed an association called as 'Anuradha Flat Owners Association' and approached the District Consumer Court alleging that the construction is defective and on dismissal the same was impugned before the State Consumer Redressal Commission on the grounds of not providing the basic amenities and after dismissing the same, the flat owners filed suit in O.S. No.1624 of 2007 at City Civil Court on the grounds that they should not disturb their peaceful possession etc., which is pending and the flat owners also filed O.A. No.716 of 2001 before the Debts Recovery Tribunal which is also pending. It is further averred that when the 1st respondent approached the G.H.M.C authorities by submitting revised plan for further construction, the flat owners association raised objections and due to which the G.H.M.C authorities did not sanction for further construction permission and kept the file pending since 2007 and the association is illegally causing obstructions to the enjoyment of his property rights for more than 20 years with malafide intentions of grabbing the property rights and due to their illegal acts, he was put to great loss of time, wealth and reputation and requested to take necessary action against them.

3) Basing on the above said allegations the police registered the case for the offences stated supra. Coming to Section 427 of

I.P.C there must be mischief and thereby cause loss or damage. In the present case the petitioners are flat owners who purchased from the complainant itself. Even as per the version of the complainant also he handed over the possession of the flats and hence the ingredients of the complaint do not attract the offence punishable under Section 427 of I.P.C as no mischief caused by the flat owners. In addition to that this is an offence of non-cognizable and the police should not be registered as a crime basing on the report. Coming to Section 448 I.P.C. there is no criminal trespass by entering into or remaining in any other building etc., as a human dwelling since even as per the version of the complainant all the flats belongs to the flat owners and hence no ingredient attracts the offence of house trespass. Section 454 I.P.C says lurking house trespass or house-breaking in order to commit any offence. In the present case, the complainant never says that the petitioners have been lurking in any place or break open any house for committing any offence.

4) Coming to criminal intimidation punishable under Section 506 I.P.C, the definition of criminal intimidation under Section 503 I.P.C says that whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. In the case on hand, the 1st respondent/defacto-complainant and the petitioners/accused have filed several cases viz., the 1st respondent/defacto-complainant presented a complaint before the learned IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and the same was

referred as 'civil in nature', the flat owners filed two suits in O.S. No.453 of 1991 and O.S. No.1624 of 2007 in City Civil Court, the petitioners raised objection when the 1st respondent submitted revised plan for further construction before the Greater Hyderabad Municipal Corporation, the petitioners also filed consumer dispute for redressal, of course the same was ended in favour of the 1st respondent, the 1st respondent filed W.P. No.1248 of 2013 against the petitioners, the petitioners approached Debts Recovery Tribunal and filed O.A. No.716 of 2001 which is also pending apart from other criminal cases against each other. Pending or disposal of several cases could not be a ground for the offence under Section 500 I.P.C as the same was hit by the exceptions 5 to 9 of Section 499 of I.P.C. There is a bar under Section 199(1) Cr.P.C for police to register Crime under Section 154 Cr.P.C as a cognizable offence, from what Section 199(1) Cr.P.C provided is filing of a private complaint by the aggrieved under Section 200/202 Cr.P.C read with Section 190 Cr.P.C.

5) On perusal of the entire case, this Court feels that because of several cases pending against each other, on generation of aggravated form of heat in the minds of the parties though no ingredients attract for the acts done by the petitioners this complaint is filed to fight with the petitioners in one way or the other. Filing of criminal complaint by a party after losing in civil litigation tantamounts to abuse of process by converting civil litigation into a criminal litigation and the same was expressed by the Apex Court in ***Rashmi Jain V. State of U.P.***^[1] following the guidelines in ***State of Haryana v. Bhajan Lal***^[2] and the latest in ***Rajib Ranjan V. R.Vijay Kumar***^[3]. Therefore, the facts culled out from the record, entire case comes under the purview of civil in nature besides the legal bar

referred supra for some of the offences for police to register crime and investigate.

6) In the result, the Criminal Petition is allowed and all the proceedings in Crime No.24 of 2014 of Nallakunta Police Station, Hyderabad are quashed and the bail bonds of the accused, if any, shall stand closed. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.08.2015

ksh

[\[1\]](#) (2014)13 SCC 553

[\[2\]](#) AIR 1992 SC 604

[\[3\]](#) (2015)1 SCC 513