

THE HON'BLE SRI JUSTICE Dr B. SIVA SANKARA RAO

CRL.P.No.2993 of 2015

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C. seeking to quash the proceedings in Crime No.298 of 2014 of CCS Hyderabad (Old Crime No.337 of 2013) P.S., Humayunnagar, Hyderabad, dated 20.11.2014 for the offence punishable under Sections 448 and 506 IPC. It shows the above crime was originally registered by the Station House Officer, Humayunnagar P.S as Crime No.337 of 2013, dated 2.12.2013 and latter same was registered by the CCS, Hyderabad.

2. Though notice ordered to the second respondent was unserved with 'in-sufficient' address, and subsequently, the same was returned as 'addressee left' and later notice ordered to the counsel and that was served. Hence, service is held sufficient and taken as heard and heard the 1st respondent-State represented by Public Prosecutor and heard the counsel for the petitioner/accused and perused the material on record.

3. It is based on the report of the 2nd respondent/de facto complainant, dated 02.12.2013 by name Mohd Gulam Afroz, stating that on 06.08.2013, he bought the property i.e., D.No10-3-282/2/A/12, near Jahara Mosque, Humayunnagar from one Susheela for Rs.10 lakhs for development and on 02.12.2013 at about 5.00 p.m., some unknown persons tried to grab the property and broken up the locks and entered into the premises without permission and made a mess of the place and thrown all belongings upside down and when the de facto complainant asked them they tried to assault him by threatening to leave the premises else they can see his end and later they disclosed their names as Md Yousuf Khan and others, hence to take action.

4. The petitioner Mohd. Ali Islami, S/o Ali Akbar filed the petition showing the said de facto complainant as 2nd respondent and the 1st respondent-State represented by Public Prosecutor to quash the said F.I.R proceedings.

5. The contentions in the grounds of quashing the F.I.R are that the petitioner/accused is the absolute owner of the premises as mentioned in the F.I.R bearing D.No.10-3-282/2/A/12, situated at Plot No.6 to an extent of 332.00 sq.yds., near Jahara Mosque, Venkatadri Nagar, Humayunnagar, which he has purchased under the Registered Sale Deed No.5034/2013, dated 18.11.2013 from its original owner i.e., Mr vinod Philips Mathews, for a valuable consideration of Rs.91,00,000/- and since then he is in peaceful possession and enjoyment of the same. It is further averred that the vendor of the petitioner stated supra purchased the same property from its original owern Miss Philominio Coelho vide Registered Sale Deed No.10476/1980, dated 18.09.1980 and the vendor of the said Coelho purchased the said proeprty from Nethaji Nagar Co.op. Housing Society, Humayunnagar, Hyderabad under Registered Sale Deed No.177/1977, dated 22.01.1977.

6. It is further averred that the executants of the GPA of the 2nd respondent i.e., P.Susheela David claiming the above said property vide alleged will deed dated 3.6.2003 alleged to be executed by Miss Philominio Coelho in her favour and another person by name Manohara, who is the sister of the said Susheela also claiming the said property, and both Manohara and Susheela with rival contentions approached this Court by filing W.P.No.15913 of 2011, which is filed by Manohara questioning the action of the GHMC entering the name of her sister Susheela David in the records. The said Susheela David also filed W.P.No.22618 of 2011 questioning the notice issued by the GHMC and both the Writ Petitions are disposed of by this Court on

08.09.2011 directing parties to file a declaratory suit before the competent Civil Court for relief of declaration of their title and the successful party there from can approach the GHMC for mutation, till then, both the parties shall pay the property tax in their respective occupation, which shall not be treated as recognition of their respective rights till the dispute relating to the title being decided by civil Court. As per the directions of this Court in W.P.No.15913 and 22618 of 2011, the said Susheela David filed O.S.No.889 of 2013 on the file of the IX Additional Chief Judge, City Civil Court, for declaration of title and possession over the property against her sister Manohara and also filed I.A.No.301 of 2014 for injunction and the same was granted by the order dated 03.06.2014. Against the said order of injunction, the accused/quash petitioner herein filed CMA No.574 of 2014 before this Court and the same was allowed on 07.07.2014 setting aside temporary injunction order in I.A.No.301 of 2014 in O.S.No.889 of 2013, dated 03.06.2014 and the same was become final in the pending suit. It is further averred that the de facto complainant obtained GPA from Susheela David on 03.08.2013 without having any right, title or possession over the house property in question, much before filing of the suit dated 18.11.2013 and in fact the executants of GPA by name Susheela David in favour of the de facto complainant, in the suit filed sought the relief not only for declaration but also for possession of the property and the title not even decided by the competent civil Court. Pursuant to the writ petition directions, there is nothing for the de facto complaint to claim any possession, much less, the alleged trespass against the person by name Yousuf Khan on the alleged threats and under the guise of the pending crime, there is likelihood of roping the petitioner being in settled possession of the property with title transferring from Manohara, and under the guise of the crime, the police are harassing the petitioner, where the dispute is purely in civil in nature and the FIR is liable to be quashed. It is also averred that on the report of the accused herein against the de

facto complainant and others, Humayunnagar police registered the Crime No. 338 of 2013 for the offence punishable under Section 448, 380 r/w 34 of IPC and the 2nd respondent was arrested and enlarged on bail later and the dispute relating to both the crimes are one and the same and based on the agreement of sale also executed by Susheela David, Mohammed Shahnawaz filed O.S.No.404 of 2011 on the file of the III Additional City Civil Court, Hyderabad for specific performance of contract. The said Susheela David also executed earlier G.P.A. dated 17.01.2011 in favour of one Feroz Ali besides Development Agreement of even date and she also executed another agreement covered by O.S.No.404 of 2011 and she executed various agreements to various persons and a cheating case in Crime No.33 of 2014 filed by one Kamaluddin Hirani against Susheela David also pending and thereby the proceedings in Crime No.298 of 2014 of CCS, Hyderabad (old Crime No.337 of 2013 of Humayyunnagar, Hyderabad) is liable to be quashed.

7. From the quash petition proceedings, there is nothing to show that the crime is pending against the petitioner and seeking to quash the F.I.R. In fact, the petitioner filed anticipatory bail application by referring to un-registered crime in CrI.M.P.No.644 of 2015 before V Additional Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad showing the State through P.S., CCS, DD, Hyderabad and the section of law is mentioned as 420 ad 506 IPC and not even 448 and 506 of IPC, while mentioning crime No.298 of 2014, the same was ended in dismissal, as the sections are not prone to maintain anticipatory bail application and the crime is not registered to entertain the application for the offence under Section 420 IPC.

8. Having regard to the above, in the absence of showing the petitioner is specifically arrayed as accused in any of the crime pending anywhere, the question of quashing the F.I.R., so far as the accused is concerned does not arise, but for to work out for any other

remedies to him elsewhere.

9. With the observations, the petition is closed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

JUSTICE Dr B. SIVA SANKARA RAO.

Date : 03-11-2015
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