

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.10235 of 2010

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash all further proceedings in C.C. No.254 of 2007 on the file of the learned Judicial First Class Magistrate, Nalgonda, which is filed against the petitioners/A1 to A4 alleging the offences punishable under Sections 448, 427 and 506 IPC.

The allegations, in brief, are as follows: The second respondent-*de facto* complainant filed a complaint with the jurisdictional police on 10.03.2007 alleging that the petitioners/A1 to A4 have criminally trespassed into the plot in dispute and caused damage to the compound wall and septic tank being constructed by the *de facto* complainant and also threatened them with dire consequences. On the basis of the said complaint, a crime was registered in FIR No.69 of 2007. After complete investigation, charge sheet was filed in the year 2007.

The contention of the petitioners is that in between the petitioners and the *de facto* complainant there are disputes which are pending in civil courts. The specific contention of the petitioners is that the first petitioner was the owner of vast extent of land in different survey numbers and he made them into plots. Out of which, one of his plot was gifted by him to his own wife, who is the second petitioner, under a registered instrument dated 29.07.2004. The very same first petitioner/A1, who exercised his rights over the properties, have sold another plot under a registered instrument to one Lakshmamma, who is none other than the mother of the *de facto* complainant. The plot sold by A1 to Lakshmamma is situated in survey No.86 whereas the plot gifted by A1 to his wife viz., A2 is situated in survey No.84/A and 87. It is further contended that the *de facto* complainant, having purchased the plot from his own mother, has forcibly occupied the plot,

which actually belongs to A2. Hence, A2 was constrained to file a suit in O.S. No.49 of 2007 on the file of the Court of Senior Civil Judge, Nalgonda, for recovery of possession on 19.02.2007. On 20.02.2007, the Civil Court directed both the parties to maintain *status quo*. As a matter of fact, the *de facto* complainant gave an undertaking that the construction, if any, made on the disputed plot will be removed by him without claiming any equities. After more than three weeks thereafter, the present complaint is filed.

The learned counsel for the petitioners submits that it is a clear case where the *de facto* complainant has resorted to criminal prosecution to exert pressure on the petitioners/A1 to A4 to settle his civil dispute. He further submits that therefore it is a fit case where continuation of the criminal prosecution will be veracity of justice, which cannot be countenanced.

Having perused the material on record and having heard the learned counsel for the petitioners, what is noticed is that even though what all that is contended by the petitioners is true so far as the title or possession over the suit property is concerned, *prima facie* allegation is that on 10.03.2007 the petitioners have criminally trespassed into the plot in dispute and caused certain damages and held out threats, therefore, this matter needs to be investigated into, and since there is sufficient material to presume that an offence attracting IPC has been committed, the same cannot be quashed and the trial should lead to logical conclusion without it being interrupted.

In view of the above, it is not a fit case where all further proceedings in C.C. No.254 of 2007 on the file of the learned Judicial First Class Magistrate, Nalgonda, are liable to be quashed. However, since taking into consideration the nature of dispute, the learned trial Magistrate is directed to proceed with the trial of the case being uninfluenced by any of the observations made herein and also without insisting for the presence of the petitioners 2 to 4/A2 to A4 on every date of hearing unless their presence is required for any specific

purpose.

With the above observations, this Criminal Petition is dismissed.

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

M.S.K.JAISWAL,J

Date: 28.08.2015
MVA

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