

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5174 of 2015

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ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to set aside the order of the learned Metropolitan Sessions Judge, Hyderabad, dated 01.06.2015 in CrI.R.P.No.95 of 2015, wherein the order dated 20.04.2015 passed by the learned XVI Additional Chief Metropolitan Magistrate, Hyderabad in S.r.No.1064 of 2015 in M.P.No.933 of 2015 in C.C.No.587 of 2013 was confirmed.

2. Heard the learned counsel for the petitioner and the 1st respondent-State represented by the Public Prosecutor, before admission and before ordering any notice to the 2nd respondent.

3. Crime No.148 of 2012 was registered by Shahinayathgunj Police Station, Hyderabad, for the offences punishable under Sections 448, 323 and 506 IPC on the complaint of the de facto complainant and after investigation police filed the final report against the petitioner/accused. The learned XVI Chief Metropolitan Magistrate, Hyderabad, has taken cognizance for the offences referred supra against the accused. The offences are triable by the Magistrate as it is a summons case. The petitioner even stated to be examined under Section 251 Cr.P.C. on the accusation and he denied the truth of the same, thereby there remains to commence the trial to proceed further as contemplated under Section 309 Cr.P.C.

4. Now, in the course of the investigation by police, undisputedly as per the police final report, the premises was kept under lock and the key was seized from the petitioner. The petitioner earlier filed a civil suit before the I Additional Senior Civil Judge, City Civil Courts, Hyderabad, and obtained ad-interim injunction order against the de

facto complainant. Subsequently, that injunction order was vacated and it appears a miscellaneous appeal is pending. The injunction dismissal order is mainly on the contest by the de facto complainant in saying she already filed a suit for cancellation of sale deed in question. It is not necessary to go into the further merits of the civil lis so also maintainability of the suit for bare injunction as the trespass is different from dispossession for the claim of injunction, as laid down by this Court in **Saraswathi v. Dr.Jaganmohana Rao**.

5. Now the core issue is, who is entitled to the key in question. Presently, the de facto complainant filed another application after the injunction order is vacated by the trial Court in the suit for injunction filed by the petitioner to hand over the key that was allowed vide order dated 20.04.2015 and confirmed in the revision, which is now impugning herein.

6. The important fact is that the key in question is seized from the accused and not from the de facto complainant even as per the charge sheet averments, which is not in dispute. Thereby, who is entitled to the key is from the proof of trespass, if any, to decide after full dressed trial by adopting summons procedure in the calendar case proceedings in respect of civil litigation pending. Thereby it is not advisable for the trial Magistrate to either party to part with the key. It is while final disposal of the criminal case, the learned Magistrate has to pass order including from entitlement of the key, as per Section 452 Cr.P.C.

7. Accordingly, this criminal petition is disposed of, directing the learned Magistrate to retain the key, if necessary, by securing back from whom so ever it is, by virtue of this order and to proceed with the trial of the Calendar Case No.587 of 2013 on day-to-day basis as per the letter and spirit of Section 309 Cr.P.C. and pass final orders to hand over key while disposal of the case including by a finding on entitlement of key, which is for any aggrieved prone for challenge by appeal under Section 454 Cr.P.C.

8. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28th September 2015.

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