

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8091 OF 2015

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ORDER:

This Criminal Petition is filed by the petitioners/accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.736 of 2015 on the file of VII Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offence punishable under Sections 207, 406, 420, 423, 447 and 511 I.P.C., which is out come of the report of the 2nd respondent-The State Bank of India, Hyderabad, Circle Supervising Staff Cooperative Building Society Limited, represented by its Secretary, that was registered by Malakpet Police Station, in crime No.443 of 2014. In fact the same was private complaint originally filed before the Magistrate under Section 156(3) Cr.P.C. referred the same for police investigation and after investigation filed the final report that was taken cognizance by the Magistrate supra and it is now impugning the very cognizance taken by the learned Magistrate and its sustainability which is purely civil dispute.

Heard the learned counsel for the petitioners and the learned Public Prosecutor for the State before notice to respondent No.2 and before admission.

The petitioners claim that they are owners of 248 Sq.yards of site which they got by virtue of oral gift from the decree holder in O.S.No.7 of 1958 covered by judgment dated 06.04.1959 and there is also an acknowledgement of the oral gift by memorandum dated 29.07.1994 and that it is a purely civil dispute and the prosecution could not bring forth any material to substantiate their contention it is their property much less either in Sy.Nos.121 or 122 of the alleged part of left over site to claim as encroachment. Whether the oral gift is valid or not and an acknowledgment of oral gift is sustainable or not and they are in possession by virtue of right or any long standing possession without ownership and it is form part of complainant's property are complicated

questions of fact to be adjudicated by the trial court and thus premature for this Court to make any expression in this regard much less to admit the application for quashing of C.C. proceedings when it is specific case from the very report itself covered by complaint referred for investigation, of the site is form part of their property in plot No.121 in between 121 and 122.

Having regard to the above, the material falls short for this Court to admit the application. No doubt so far as offence under Section 207 I.P.C. concerned there is a bar for the police investigation and taking cognizance by the learned Magistrate as per Section 195(1)(b)(i) of Cr.P.C. and thereby the same is liable to be quashed but for the other offences taken cognizance. Accordingly, this criminal petition is allowed to that extent while disposing in other aspects giving liberty to the petitioners to file application under Section 239 Cr.P.C. before the learned Magistrate concerned if no grounds to frame charge under Section 240 Cr.P.C. in such an event the learned Magistrate shall hear and pass appropriate orders on own merits from the prosecution material vide **State of Orissa v. Debendranath Padhi**, within one month from the date of receipt of a copy of this order, so as to take up trail or to discharge as the case may be. In the event of framing of charges, further remedies are left open.

Accordingly, this Criminal Petition is allowed in part.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:30-09-2015

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