

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1656 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 to A6 seek to quash the proceedings in C.C.No.417 of 2011 on the file of Judicial First Class Magistrate, Alamuru.

2) A1 is the husband of A4. A2 and A5 are their relations and A3 and A6 are the henchmen of A1. The 2nd respondent/*defacto* complainant is the wife of deceased brother of A1. The complainant, A1 and A4 are residents of Angara village, Kapileswarapuram Mandal, East Godavari District. The complainant presented a complaint to the police of Angara PS alleging that there are disputes between her and family of A1 in respect of ancestral land and house properties and in that context, on the night of 13.07.2011 at about 8 PM, when the complainant who is a widow was alone in her house, all the accused came there and abused her and assaulted her and beat on her right hand with an iron rod and caused injuries and also took away her gold ornaments and seeing her plight her neighbours rescued her. On the strength of complaint police registered a case in Cr.No.55 of 2011 against the accused and after investigation laid charge sheet for the offences under Sections 448, 324, 506, 509 r/w 34 IPC. Hence the instant petition.

3) Heard arguments of Sri G.Krishna Murthy, learned

counsel for petitioners/accused and learned Public Prosecutor (AP). Though notice to 2nd respondent/complainant was served by registered post, there is no appearance on her behalf.

4) Denying the charges, learned counsel for petitioners vehemently argued that the complainant is the wife of late brother of A1 and she in collusion with another brother of A1 tried to interfere with the lands and house property situated in Angara in which the offence is allegedly took place. Learned counsel submitted that in fact those lands and house property were bequeathed by A1's mother—late Savitramma under a registered Will dated 30.11.2002 in favour A1's son—Nekkanti Venkata Surendra and as his son is pursuing his studies, A1 is looking after those properties. When other brothers of A1 and complainant tried to interfere with the land and house properties, Surendra and his farm servant filed O.S.No.180 of 2011 on the file of Senior Civil Judge, Ramachandrapuram against them in which the complainant was shown as 4th defendant and in I.A.No.588 of 2011 the Court granted interim injunction on 08.07.2011 in respect of land and house property against the defendants after full-fledged enquiry and in view of the said order, it is cleared that A1 and his family members were in effective possession of the land and house property in Angara where allegedly the offence took place. Hence the allegation of the complainant that on the night of 13.07.2011 A1 and his henchmen

trespassed into very same house and beat her is palpably false and created to implicate the accused in a false case. Learned counsel submitted that defendants in the said suit carried out CMA against the order in I.A.No.588 of 2011 and the District Judge set aside the order dated 08.07.2011 of learned Senior Civil Judge, Ramachandrapuram. However, the plaintiffs filed C.R.P.No.207 of 2012 in High Court and in its order dated 24.03.2014 the High Court allowed the revision petition and restored the injunction order granted by the trial Court in I.A.No.588 of 2011. As such it is confirmed that A1's family members have been in possession of the disputed house and other properties and therefore the question of their trespassing into their own house and assaulting the complainant does not arise. He thus submitted that in the back drop of above facts, continuation of criminal proceedings against them would amount to abuse of process of Court and hence may be quashed.

5) Per contra, learned Public Prosecutor by producing the CD file vehemently opposed the petition on the main plank of argument that the record would show that in spite of injunction order the complainant was residing in the disputed house and accused on the strength of injunction order tried to evict her by assaulting her and in that process they caused the injuries to her which was witnessed by the neighbours who are examined as LWs.2 to 7 and the Investigating Officer has also secured the wound certificate from the Government doctor and all these would *prima facie* show accused

trespassed into the house and made an assault on the complainant. Learned Public Prosecutor thus submitted that let the petitioners face the trial and establish their defence stand before the trial Court.

6) On a careful perusal of the material placed by both the parties, I find force in the submission of learned Public Prosecutor. It is true that the order dated 08.07.2011 in I.A.No.588 of 2011 in O.S.No.180 of 2011 would show that the learned Senior Civil Judge granted interim injunction in favour of N.Venkata Surendra son of A1 and against complainant and three others in respect of plaint A schedule landed property and plaint B schedule house property in which, as per complainant, the accused have trespassed on the night of 13.07.2011 and assaulted her. The claim of the petitioners is that in the light of injunction granted by the Civil Court, the question of their trespassing into their own house and assaulting the complainant does not arise and hence the complaint allegations are palpably false. However, a perusal of statements of LWs.2 to 7 contained in C.D file produced by Public Prosecutor would show that they claimed to have witnessed accused trespassing into the disputed house on 13.07.2011 and causing bleeding injuries to the complainant and they rescued her and provided treatment. Charge sheet shows that wound certificate of complainant was also obtained by the Investigating Officer from the Civil Assistant Surgeon, Government Area Hospital, Ramachandrapuram. In these circumstances, whether the complainant was in real

possession of the disputed house and accused trespassed into the same on the strength of injunction order and assaulted her or whether the complainant unable to digest the injunction order granted against her created a false story in Cr.No.55 of 2011 has to be decided only after full-fledged trial and therefore, in my considered view, it is not a fit case to quash the criminal proceedings at this stage. Therefore, petitioners are directed to face the trial and vindicate their defence stand. However, considering the nature of the case, the presence of the accused before the trial Court is dispensed with except on the occasions when the trial Court specifically requires their attendance.

7) Accordingly, this Criminal Petition is disposed of.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 03.06.2016

Murthy