

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2565 of 2013

ORDER :

The petitioners are A.1 to A.3 of C.C.No.249 of 2012 on the file of Judicial Magistrate of First Class, Podili, Prakasam District. The 2nd respondent is the defacto complainant. The petitioners sought for quashing of the calendar case proceedings supra pending against them for the offences punishable under Sections 447, 323 & 506 of Indian Penal Code.

2. The contentions of the quash petitioners in nutshell are that the matter is purely a civil dispute brought within mis-chief by abusing the process and that there is already a civil suit in O.S.No.157 of 2011 pending on the file of Junior Civil Judge, Podili against the 2nd respondent and two others for the relief of permanent injunction there from interference with plaint schedule property wherein and part of which the defacto complainant allegedly purchased under sale agreement and that it is with false accusations endeavoured and having unsuccessful in the earlier round of litigation by filing a complaint that was cause referred to police for investigation and from the police final report and on protest application the learned Magistrate has taken cognizance which is unsustainable without even referring to earlier police referred report material for not a new private complaint to ignore referred final report material even the protest is against the referred report and there from sought for quashing of the proceedings under Section 482 of Criminal Procedure Code (Cr.P.C).

3. The 2nd respondent was served with notice and proof of service is filed but failed to appear before this Court.

4. Heard and perused the material on record.

5. Learned counsel for the petitioners reiterated the above contentions with reference to the material on record. Whereas it is the contention of the learned Public Prosecutor representing the State that the learned Magistrate took cognizance from the material on record under Section 190 of Cr.P.C., from the protest application with reference to pre-cognizance statements from the material on record and for this Court while sitting against it, there is nothing to interfere and thereby sought for dismissal of the quash petition.

6. The factual background necessary to mention in deciding the sustainability or otherwise of the quash petition is that the 2nd respondent by name Shaik Mahaboob Basha of Podili village filed a private complaint before the learned Magistrate against six accused persons of whom the petitioners are A.1 to A.3 as arrayed in the private complaint which was filed on 10.10.2011 and sought for referring said private complaint for police investigation. The private complaint dated 10.10.2011 speaks that the alleged occurrence took place on 01.10.2011 at about 10.00 a.m. at Sy.Nos.827/1 & 2 of Podili village, that the accused persons including the petitioners 1 to 3 herein as A.1 to A.3 are land grabbers, that the defacto complainant- Shaik Mahaboob Basha along with two others Shaik Yaseen and Shaik Rasool jointly purchased Ac.0.47 cents of land out of total extent of about Ac.4-92 cents from one Bandlapalli Samrajyam of Podili for Rs.21,15,000/- under sale agreement and took possession of the property pursuant to the sale agreement on 18.08.2011 and on the alleged date 01.10.2011 while the complainant was trying to construct a compound wall with the help

of coolies in the said Ac.0.47 cents, the accused persons 1 to 6 trespassed into the site armed with deadly weapons like axes and knives, with rowdy elements and scolded the defacto complainant in filthy language, that A.1 tried to kill the complainant with knife but the complainant escaped, A.2 kicked him on his stomach from which the complainant fell down, that all accused scolded him, beat with hands and legs, threatened with dire consequences and the other two purchasers with complainant Shaik Yasin and Shaik Rasool among others were present and rescued the complainant.

7. When the matter was referred to the police for investigation under Section 156 (3) of Cr.P.C., by the learned Magistrate, no doubt for the asking, as nothing reflects judicial application of mind much less by reflecting the same with any reason; the Station House Officer, Podili, registered Cr.No.125 of 2011 on 14.10.2011 and after investigation filed the final report before the learned Magistrate and from the police final report for no offence made out to take cognizance of the crime registered and investigated supra; from the protest application of the defacto complainant supra, the learned Magistrate by recording the sworn statement of witnesses, produced in CFR.No.2456 of 2012 (allotted to protest application) by proceeding as a private complaint procedure took cognizance by order dated 18.12.2012 for the offences punishable under Sections 447, 323 and 506 IPC. The same is now impugned in the protest application.

8. The further factual background required to mention is that, the total extent of Sy.No.827/1 & 2 of Podili village consists of Ac.4.92 cents. The 6th accused Makineni Amruthavalli to whom the other accused persons are related to including the petitioners 1 to 3, claims as absolute owner by virtue of registered sale deed dated 22.06.1960, and that since then she has been in possession and enjoyment. It is the further case of the accused persons in their civil suit in O.S.No.157 of 2011 for permanent injunction maintained by 6th accused and also a counter complaint case which is first in point of time to the present crime No.125 of 2011 of same police station covered by Crime No.124 of 2011 of the FIR also dated 14.10.2011 and the same referred to police for investigation on her private complaint i.e., A.6 in calender case proceedings against the defacto complainant herein and two others so called agreement holders, for the offences alleging tress pass, mis-chief, hurt, criminal intimidation and also attempted on her life with allegations that the same offence was also occurred on 01.10.2011 at about 10.00 a.m., while the said defacto complainant (A.6) in Crime No.124 of 2011 was at her fields of Ac.4.92 cents supra, the accused persons i.e., the defacto complainant herein and two others i.e., the alleged agreement holders illegally trespassed into her land and abused her in vulgar language, beat her indiscriminately and damaged the Sajja standing crop, due to the civil dispute with regard to the land and in their attempt to occupy the same, attacked to kill her by saying one of the accused dragged her and put his leg on her neck, attempted to press her neck in order to do away with her life, however she was rescued by others including the accused persons 1 to 3 herein. Among both the private complaints registered as crimes supra Crime No.124 of 2011, was the first in point of time filed on 03.10.2011 and Crime No.125 of 2011 the present crime is the out come after referred report from protest petition filed on 10.10.2011, it is averred as if police reports were given respectively. However, there is no proof about giving of any statement in oral or atleast

written report to the Station House Officer, Podili. The learned Magistrate did not consider the same in entertaining the private complaints and referred to police. It is needless to say, so far as the present Crime No.125 of 2011 is concerned, police filed final report and on protest petition, the learned Magistrate took cognizance and numbered as C.C.No.249 of 2012. Whereas in the other crime, to which A.6 in Cr.No.125 of 2011 was the defacto complainant bearing Crime No.124 of 2011, the police after investigation filed the final report in the form of charge sheet against the defacto complainant of Crime No.125 of 2011 and two others and among the witnesses as three accused and the learned Magistrate took cognizance for the offences punishable under Section 447, 427, 323, and 506 r/w. Section 34 IPC and numbered as C.C.No.61 of 2012.

9. From this background it is important to say that a civil suit was already maintained in O.S.No.157 of 2011 for permanent injunction by A.6 of Crime No.125 of 2011 against the defacto complainant herein and two others. Her claim is pursuant to registered sale deed dated 22.06.1960 and since then she is in possession and enjoyment of the entire Ac.4.92 cents. The claim of the defacto complainant herein along with two others is that they entered into agreement of sale on 18.08.2011 with one Bandlapalli Samrajyam and claimed to have taken possession on that date and on 01.10.2011 he went to the site to construct a compound wall the alleged occurrence took place. As referred to supra the offence was allegedly taken place, according to both of them on 01.10.2011 at Sy.Nos.827/1 & 2, in which the defacto complainant of Crime No.125 of 2011 along with two other witnesses claimed to have purchased only Ac.0.40 cents or so that too under an agreement and not even a registered possessory agreement about a month prior to alleged occurrence and there is already existing civil dispute regarding title for not even shown the vendor Bandlapalli Samrajyam got any right over any of the extent. The learned Magistrate did not consider the civil dispute involved in taking cognizance even on the protest application and by simply relying upon the sworn statements of six witnesses of whom one is the defacto complainant repeated the same facts mentioned by him in his earlier private complaint dated 10.10.2011 for the alleged occurrence on 01.10.2011 without any explanation for the delay of 10 days and even without filing a copy of police report, if at all allegedly given and without even deciding existence of possession with the agreement holder of the alleged agreement dated 18.08.2011, much less to say even the vendor of the agreement holder got any right or title including any possession to deliver the same to rely. In the absence of which nothing could be made out of the alleged offence of trespass and even from the very version it is highly unbelievable that if really the persons are armed with deadly weapons with an intention to kill, there is no attack with any weapon and what is alleged is of criminal intimidation with no basis and regarding alleged hurt simply he did not even speak at which part of the body any injury is caused and with what proof the medical certificate and in the hands of which of the accused. Thus, on its face, it clearly reveals that both sides brought the civil dispute into a criminal case and the same cannot be allowed to continue which is nothing but abuse of process .

10. It is laid down by the Apex Court in ***Rishipal Singh Vs State of Uttar Pradesh and another***^[1] by referring to several of the expressions that a frustrated litigant need not be permitted to vent vindictiveness through abuse of process of law and such proceedings are

required to be stopped in early stages and in ***Mohammed Ibrahim and others Vs State of Bihar and another***^[2], it was held that that disputes which essentially are civil in nature, filed as criminal complaints. It is the duty of the criminal Court to check any abuse of process and criminal Court should ensure that criminal proceedings are not misused for settling scores of pressurising parties to settle their civil disputes. However, civil disputes in some cases may also contain ingredients of criminal offences, such disputes have to be entertained notwithstanding they are also civil disputes.

11. Having regard to the above, the criminal petition is allowed and the proceedings in C.C.No.249 of 2012 are quashed. It is needless to say that the other Criminal Case C.C.No.61 of 2012 also shows outcome from the civil dispute.

Consequently, miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

18th March, 2016.
Rds

Dr. B.SIVA SANKARA RAO J,

^[1] (2014) 7 Supreme Court Cases 215

^[2] (2009) 8 Supreme Court Cases 751