

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14678 of 2016

ORDER:

This Criminal Petition is filed by the petitioners, who are accused Nos.8 and 9 respectively, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against them in C.C.No.106 of 2015 on the file of II Additional Judicial Magistrate of First Class, Bhimavaram, West Godavari District.

2. A private complaint was filed against the petitioners herein and eight others for the offences punishable under Sections 143, 447, 506(1), 294 and 427 read with 34 of the Indian Penal Code (for short 'IPC').

3. The allegations in the complaint are as under : The 2nd respondent herein is the owner of residential house site to an extent of 129.4 square yards situated in R.S.No.692/1-A of Nandamuru Garuvu village of Veeravasaram Mandal, which was purchased from one Adidala Prabhuvaran, son of Sundara Rao under a registered sale deed on 12-04-1999. One Pechetti Uday Chalapathi Rao, son of Peddi Raju was having house sites on Northern and Eastern sides of the site of the 2nd respondent herein. The 2nd respondent was having a way towards northern side from her site to go to P.P. Road and her site was the last one to the said way. Since there were some disputes with regard to the pathway, the said Chalapathi Rao used to demand the 2nd respondent to sell away her site to him,

for which she refused. Bearing that in mind, the said person was proclaiming in the village that he would trespass into the site by removing the fencing. Apprehending danger, the 2nd respondent filed O.S.No.619 of 2005 on the file of I Additional Junior Civil Judge, Bhimavaram, and by its order dated 21-10-2005 in I.A.No.509 of 2005 the learned Judge granted temporary injunction against the said Chalapathi Rao and others from interfering with the possession and enjoyment of the subject site. On 23-12-2005 she got notices issued to A-1 (the Mandal Revenue Officer, Veeravasaram Mandal), A-7 and the Revenue Divisional Officer, Narasapur apprehending danger to her property in the hands of said Chalapathi Rao in spite of injunction orders in her favour. It is alleged that on 25-12-2005 all the accused, being aware about the injunction orders passed by the Civil Court, went to the site of the 2nd respondent on the pretext that some neighbouring house owners made a representation to A-1 that the coconut leaves fencing erected on the eastern side of her house site is causing obstruction to the passage towards northern side, and on the said pretext, they started removing the coconut leaves fencing on the eastern side of her site and thereby caused loss to a tune of Rs.2,000/-. Though a report was lodged on 28-12-2005 with the Station House Officer, Veeravasaram Police Station, no action was taken. On 30-12-2005 the 2nd respondent herein sent a petition to the Station House Officer, Veeravasaram Police Station complaining about the earlier incidents and also

informing them about raising a fence on the eastern side of her house site. As the authorities did not respond to these petitions, the 2nd respondent was forced to file the said private complaint against accused alleging that on 12-03-2006 A-1, A-2, A-7 and others trespassed into her site, removed the coconut leaves fencing on the eastern side of her house site and occupied some portion of her land in spite of there being an injunction order.

4. Heard the learned counsel appearing for the petitioners, learned Public Prosecutor appearing for 1st respondent-State and also learned counsel appearing for the 2nd respondent.

5. The learned counsel for the petitioners mainly contends that even if accepting the allegations in the complaint to be true, no offence is made out against the petitioners. According to him, the complaint has been filed as a counterblast to a report lodged by the Mandal Revenue Officer against the 2nd respondent herein on 11-02-2006, which was registered as a case in Cr.No.23 of 2006 of Veeravasaram Police Station, West Godavari District for the offences punishable under Sections 447 and 341 of I.P.C. The petitioners, who are police officials stationed at Veeravarasam Police Station are alleged to have effected arrest of the 2nd respondent on 08-03-2006. It is further brought to the notice of this Court that on 23-12-2005 the Mandal Revenue Officer, Veeravasaram directed the 2nd accused to provide necessary bandobast on 25-12-2005 while

restoring the pathway in R.S.No.692/1B of Nandamurugaruvu village.

6. From the material available on record, it is clear that the entire dispute was with regard to a pathway to the northern side of the land of the 2nd respondent herein. A perusal of the complaint would disclose that the incident of trespass initially was at the instance of one Chalapathi Rao. As he was trespassing into the land of the 2nd respondent herein, she filed O.S.No.619 of 2005 and obtained temporary injunction against the said person. The second incident of trespass is alleged to have taken place on 25-12-2005. The 2nd respondent herein was not a witness to the incident, which took place on the said date. According to her, the accused trespassed into her land and started removing the fencing on the eastern side of her site, thereby causing loss to an extent of Rs.2,000/-. As stated above, on 23-12-2005 the Mandal Revenue Officer passed an order requesting the Sub-Inspector of Police, Veeravasram Police Station, (A-2) to provide protection on 25-12-2005 as they were taking steps to restore the pathway in the said land. In view of the order passed by the Mandal Revenue Officer, the 2nd accused along with his Constables including the petitioner/A-10 were present at the scene to prevent occurrence of any untoward incident while restoring the pathway.

7. While things stood thus, the 2nd respondent herein filed W.P.No.27971 of 2005 before this Hon'ble Court seeking declaration that the notice dated 16-12-2005 in

Roc.No.2755/2005 as illegal, arbitrary and contrary to law. This Court, after hearing the arguments of both the counsels, dismissed the Writ Petition holding as under :-

“This Court is not able to agree with the submission of the counsel for the petitioner that the notice issued by the first respondent is illegal on the ground that the suit filed by the petitioner is pending. The allegation made by the third respondent is to the effect that the petitioner encroached upon the pathway and being revenue authority it is incumbent on the part of the first respondent to conduct enquiry into the matter. Further, the petitioner already approached the Civil Court and if there is any interference in possession of the property owned by the petitioner excluding the pathway, it is always open to the petitioner to file another application before the Civil Court. The invocation of Public Law remedy in the background of the case is improper”.

8. Further, on 11-02-2006 the Mandal Revenue Officer, Veeravasaram, who conducted an enquiry with regard to the closure of the pathway by the 2nd respondent, submitted a report to the Station House Officer, Veeravasaram P.S., which clearly indicate that the 2nd respondent herein has been obstructing the pathway time and again causing inconvenience to the villagers. The Mandal Revenue Officer personally inspected the site and found that the pathway was in existence since long back and earlier i.e., on 25-12-2005, the pathway was peacefully restored without any obstruction either from the 2nd respondent herein or her henchmen.

9. Since the attitude of the 2nd respondent was causing inconvenience to the villagers as she was encroaching the pathway by closing the same, the Mandal Revenue Officer lodged a report narrating the events, which took place from

December, 2005 including the order passed by this Court in the Writ Petition. Basing on the said report, the Station House Officer, Veeravasaram P.S., registered a case in Cr.No.23 of 2006 against the 2nd respondent herein. Thereafter the 2nd respondent herein is alleged to have lodged a report reiterating what all happened earlier and also holding Mandal Revenue Officer, Police Constables of Veeravasaram P.S., and others responsible for trespassing and causing damage to her property. Since the report was not acted upon, the present complaint came to be filed. As seen from the said report, which was lodged to the Police Station prior to the filing of the complaint, there was no reference to second accused in the said report. It appears that since A-2 did not take any action on the basis of the report given by her, the present complaint is filed making him as an accused along with the Mandal Revenue Officer alleging that they along with others have trespassed into her land on 25-12-2005 and removed fencing on the eastern side of her house site. Even accepting the allegations to be true, it can be said that no offence is made out against the petitioners. By virtue of the order dated 23-12-2005 passed by the Mandal Revenue Officer, which was in force even by the date of incident, the petitioners were forced to stay at the land and see that the second respondent does not encroach the pathway. Further the incident is alleged to have taken place in the month of December, 2005 and the private complaint was filed in the year 2006.

10. The Apex Court has time and again held that the Courts should carefully examine the facts before it, for the reason that a frustrated litigant, who failed to succeed before the Civil Court, may initiate criminal proceedings just to harass the other side with mala fide intention or with an ulterior motive of wrecking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide: Chandrapal Singh and Ors. Vs. aharaj Singh and Anr., AIR 1982 SC 1238; State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., AIR 1992 SC 604; G. Sagar Suri and Anr. Vs. State of U.P. and Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. and Ors., (2008) 12 SCC 531).

11. In State of A.P., Vs., Gourishetty Mohesh [\[1\]](#) the Apex Court, while dealing the jurisdiction of the Court under Section 482 of the Cr.P.C., held that 'Section 482 of the Code is not an instrument handed over to an accused to short circuit a prosecution and bring about the closure without full fledged enquiry. The said power can be exercised where there is

material to show that the criminal proceeding is maliciously instituted with an ulterior motive to wreak vengeance on the accused due to personal and private grudge'.

12. In view of the legal principles enunciated by the Apex Court, and for the reasons stated supra, it is a clear case where the private complaint has been filed by the 2nd respondent herein only with a view to take vengeance against the petitioners and with an oblique motive. In that view of the matter, this Court feels that continuation of proceedings against the petitioners in these Criminal Petitions, would amount to an abuse of process of law.

13. Accordingly, this Criminal Petition is allowed, and the proceedings against the petitioners on the file of II Additional Judicial Magistrate of First Class, Bhimavaram, West Godavari District, are hereby quashed. The miscellaneous applications, if any, pending in these Criminal Petitions shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date:19-10-2016
Dvs

[1]
(2010) 11 SCC 23

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Dated 19-10-2016

Dvs