

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.10292 of 2010

ORDER:

In the present writ petition, the petitioners are praying to quash the Crime in F.I.R.No.10/2010 on the file of Chilakalaguda Police Station, Hyderabad registered for the offences under Sections 419, 420, 468, 471, 448, 342, 348 and 34 IPC and 156(3) of Code of Criminal Procedure.

2. Heard Sri K.Rajamalla Reddy, learned counsel for the petitioners, learned Government Pleader for Home for Respondent No.1 and Sri Dattanand for Respondent No.2, apart from perusing the material available before the Court.

3. The sum and substance of the case of the complainant/2nd respondent herein is that she is the absolute owner of House bearing No.12-11-35, Plot No.22/9 admeasuring 200 sq.yards situated at Upparbasthi, Namalagundu, Secunderabad and she purchased the same by way of a registered sale deed bearing Document No.740/2002 dated 24.4.2002 on the file of Sub-Registrar, Marredpally. It is the further case of the complainant that at the time of registration, A1 to A9/petitioners herein illegally occupied the property and created unhealthy litigation by way of creating forged documents and also filed false cases. It is also the case of the complainant that all the Accused are residing in House No.12-11-35, Upparbasthi, Namalagundu, Secunderabad and O.S.No.476 of 1997 filed by A1 against the complainant's vendor, Smt.C.Dayamayanthi for specific performance on the file of Court of XIII Additional Senior Civil Judge, City Civil Court, Secunderabad in respect of the subject property was dismissed on 18.9.2007 and the said Smt.C.Dayamanthi expired on 17.2.2008 and the complainant, being registered owner, requested A1 to A8 to give possession and the Accused demanded Rs.7.00 lakhs. It is further

alleged in the complaint that on 30.12.2009, A1 requested the complainant to hold negotiations at his house and accordingly on 30.12.2009 at about 19.30 hours, the complainant along with R.Rohini Kumar, P.S.Prakash and R.Venkataramana went to House No.12-11-35 in order to attend the meeting and A1 along with A2 to A9 confined the complainant and her mediators and demanded them to sign on empty stamp papers and empty white papers and A6 to A8 on the instigation of A1 to A5 caught hold the shoulders of the complainant, bet her from backside and threatened her and her mediators with dire consequences. With the above allegations, the 2nd respondent-complainant lodged private complaint before the Court of X Additional Chief Metropolitan Magistrate, Secunderabad and the learned Magistrate referred the case for investigation under Section 156(3) of Cr.P.C. and the Police registered the instant F.I.R.No.10/2010.

4. It is contended by the learned counsel for the petitioners that the allegations made in the complaint do not attract the provisions of law indicated in the F.I.R. and even according to the defacto-complainant, she purchased the subject property in the year 2002. It is further submitted that earlier the vendor of the defacto complainant lodged a complaint with the police with similar set of allegations and the police registered crime in F.I.R.No.142/98 and the 1st petitioner herein and the father of petitioners 1 to 8, late Sri P.Yadaiah, filed W.P.No.831 of 2001, questioning the registration of the said crime and the police closed the said crime subsequently as the case of civil nature and observing the same, the said writ petition was dismissed. As such, the present crime is a patent abuse of process of law and impermissible.

5. On the contrary, it is contended by the learned Government Pleader for Respondent No.1 and the learned counsel for Respondent No.2 that in view of serious and prima facie allegations in the complaint against the

Accused/petitioners herein, the F.I.R. cannot be quashed and the petitioners need to face investigation and trial.

6. In the above backdrop, now the issue that emerges for consideration of this Court is “whether the petitioners herein are entitled for any relief from this Court under Article 226 of the Constitution of India”.

7. There is absolutely no controversy on the reality that the 1st petitioner herein instituted O.S.No.476 of 1997 on the file of the XIII Additional Senior Civil Judge (FTC), City Civil Court, Secunderabad against the vendor of the defacto complainant, Smt.C.Damayanthi, for specific performance of agreement of sale or in alternative for refund of the advance amount. The said suit was dismissed by the learned Additional Senior Civil Judge by way of judgment and decree dated 18.9.2007. There is absolutely no dispute with regard to the fact that earlier the vendor of the 2nd respondent-complainant, Smt.C.Damayanthi, pending O.S.No.476 of 1997 lodged a complaint with the police and the police registered crime in F.I.R.No.142/98. The 1st petitioner herein and his father late P.Yadaiah filed W.P.No.831 of 2001 before this Court, assailing the registration of crime in F.I.R.No.142/98. It is to be noted that Smt.Damayanthi also filed a private complaint which led to the registration of the said crime under Sections 420 and 468. There is also no controversy that the police investigated into the said crime and filed a report on 27.1.2001, referring the same as one of civil nature. In fact, W.P.No.831 of 2001 was dismissed by this Court by order dated 28.8.2001, by duly taking the said aspect into consideration.

8. Admittedly, the complainant/2nd respondent herein purchased the subject property by way of registered sale deed bearing Document No.740/2002 on 24.4.2002. In the considered opinion of this Court, for the transactions which happened between the petitioners and the vendor of the defacto complainant

prior to sale in favour of defacto complainant in the year 2002, the defacto complainant cannot lodge any complaint as the earlier complaint made by the vendor of the defacto complainant was closed by the police as a matter of civil nature. It is also the case of the petitioners that after the judgment in O.S.No.476 of 1997 dated 18.9.2007, the defacto complainant filed Rent Control case and got possession from the petitioners and the same is also not disputed. Therefore, the prosecution sought to be launched against the petitioners for the alleged offences under Sections 447, 419, 420, 468, 471, 348 cannot be maintained. Another allegation in the complaint is that the 1st petitioner invited the complainant to the place where the accused were residing and confined the defacto complainant and the persons accompanied her, therefore, the question of tress-pass also would not arise. As such, the prosecution sought to be launched under Sections 447 and 448 also cannot stand.

9. For the aforesaid reasons, the complaint which culminated in F.I.R.No. 10/2010 on the file of Chilakalaguda Police Station, Hyderabad insofar as the offences alleged under Sections 419, 420, 468, 471, 447 and 448 is hereby quashed and the prosecution in respect of other provisions of law may go on. Accordingly, the writ petition is allowed partly. As a sequel, the Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 27.10.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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27.10.2016