

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.5713 OF 2016

ORDER:

The Criminal Petition is filed under Section 482 of Code of Criminal Procedure (Cr.P.C.) to quash the Order, dated 06.01.2016, in C.R.P.No.144 of 2014 on the file of the Court of the III Additional District and Sessions Judge, East Godavari, at Kakinada, arising out of offences under Sections 268, 290, 291, 323, 327, 329, 330, 331, 334, 336, 337, 352, 355, 358, 447, 448, 504 and 506 IPC read with Section 34 IPC, whereby the learned Judge dismissed the petition preferred against the order, dated 11.11.2014, passed in C.C.S.R.No.2139 of 2014 by the Court of the Special Mobile Judicial Magistrate of First Class, Kakinada, dismissing the complaint filed by the petitioner/complainant.

The brief facts of the complaint is as follows. The complainant is resident of Ramayyapeta village and propagating Christianity through church. Originally A.1 and A.2 are owners of the property and it was given on lease to Rayudu Suryanarayana, where A.1 and A.2 are unable to take possession of the property and approached this complainant with a proposal that the said property will be given to the complainant for raising church. Believing the words of complainant, A.1 and A.2 handed over the property to the complainant, who got vacated said Rayudu Suryanarayana and subsequently, the complainant raised church in it and also raised RCC ground and first floor building with the help of donations and with his own money. Subsequently, A.1 and A.2 demanded the complainant to vacate the property and then he filed O.S.No.545 of 2005 on the file of I Additional Junior Civil Judge, Kakinada and obtained temporary injunction orders on merits and the suit is pending. That on 10.09.2013, at the instance of A.1 and A.2, A.3 and A.4 came to the church with 18 members at 12 noon and brought construction material i.e., crowbars etc.,

in autos, trespassed into the church in spite of injunction orders and they demolished the basement. Hence, the complaint.

Heard and perused the material available on record.

The trial Court after careful scrutiny of sworn statements of witnesses and after careful examination of documents filed along with the complaint, dismissed the complaint by observing that no doubt the original owners, A.1 and A.2, were present at the time of incident alleged to be occurred and that the other witnesses did not clearly and categorically depose before the Court about the commission of offence, except oral deposition. Further, in the complaint, the complainant did not disclose any commission of offence against the accused and more over, it is the case of the complainant that the accused trespassed in spite of orders of injunction, but he did not refer anywhere about the order of injunction was granted to him and the statement made before the Court did not constitute any *mala fide* intention for commission of offence. Further, the witnesses clearly stated that they have no prior acquaintance with the accused, but given the names of the accused persons, as if the names of the accused were claimed to be disclosed by them, which, *prima facie*, is not believable. Aggrieved over the order of dismissal of complaint, the complainant preferred C.R.P.No.144 of 2014 before the lower appellate Court and that the said Court dismissed the C.R.P., observing that L.Ws.2 to 4 consistently stated that A.3 tried to stab with crowbar and A.4 fisted him in the stomach, whereas the complainant himself has not stated about A.3's attempt to stab with crowbar and A.4's fisting him in stomach. Hence, the complaint does not inspire the confidence of the Court and as such, the lower appellate Court dismissed the petition. Aggrieved over the same, the present criminal petition is filed.

In view of the concurrent findings of the Courts below, this Court is not inclined to interfere with the proceedings of the Courts below. Further,

the present criminal petition is nothing but amounting to second revision. Further, the Courts below rightly dismissed the complaint of the complainant as the same does not inspire the confidence of the Court. Hence, the criminal petition is liable to be dismissed as the present petition amounts to second revision.

The Criminal Petition is accordingly dismissed. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

20.04.2016
pln

