

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.1789 of 2016

ORDER:

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1. This Criminal Petition is filed by the petitioner-accused under Section 482 Cr.P.C. seeking to quash the proceedings against him in Crime No.80 of 2015 on the file of Inavole Police Station, Inavole, Guntur District, registered for the offence punishable under Sections 193, 196, 199, 200, 406, 465, 468, 471 and 420 r/w 34 IPC.

2. The case of the prosecution is as follows:

The 2nd respondent-complainant is the absolute owner of the property admeasuring Ac.11.26 cents in Sy.No.7/5 of Mulakaluru village, Nuzendla Mandal, Guntur District. Originally, the grand father of the 2nd respondent purchased the same through a registered sale deed and after his demise, the 2nd respondent and L.W.2 got possession of the same. The petitioner-accused, who has no right, title over the above property, fabricated the pattadar pass books and got filed the suit against the 2nd respondent and others with false documents.

3. Heard and perused the material available on record.

4. It is the case of the petitioner that he filed a suit in O.S.No.75 of 2013 for permanent injunction against the 2nd respondent-complainant and another and the said suit is still pending whereas it is the case of the complainant that all the documents filed by the petitioner in the above suit are forged one and he filed a written statement in the said suit to that effect.

5. Learned Counsel for the petitioner submitted that the allegations made in the complaint are civil in nature and a civil suit is pending between the parties, and prior to adjudication of the civil suit, and without there being any finding/opinion of the Civil Court with regard to the alleged documents in the said suit, the 2nd respondent-complainant filed a private complaint and the same was referred by the learned Magistrate to the police under Section 156(3) Cr.P.C., without following the procedure under Section 156(3) Cr.P.C. and Section 340 Cr.P.C. The learned Counsel further submitted that the learned Magistrate also failed to follow the procedure laid down by the Apex Court in *Priyanka Srivastava & Another Vs. State of U.P. & Others*^[1] while referring to the matter to the police.

6. It is pertinent to note that while referring the private complaints to the police in a case of this nature it is the duty of the Magistrate to find out as to whether any cognizable offence is made out against the accused. Apart from that, when a civil suit is pending, without there being any expression of opinion by the civil court regarding the genuineness of the documents filed in the said suit, and without following the procedure as laid down under Section 340 Cr.P.C., the learned Magistrate ought not to have referred the private complaint to the police. The submissions made by the learned Counsel for the petitioner are sustainable in this regard.

7. In the above circumstances and in view of the pendency of the civil suit, this Court is of the view that the continuation of the proceedings in the above crime against the petitioner amounts to abuse of process of law, and therefore, they are liable to be quashed.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner in Crime No.80 of 2015 on the file of Inavole Police Station, Inavole, Guntur District. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 15.2.2016
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^[1] [(2015) 6 SCC 287]