

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1054 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioners/A.1 to A.3 seek to quash the proceedings in Crime No.440 of 2012 of Gajuwaka Police Station, Visakhapatnam.

2) The respondents/*defacto* complainant lodged a report with the police alleging that they are the owners of Ac.0-50 cents of land situated in Sy.No.161/12 of Chinagantyada village, Gajuwaka, Visakhapatnam which they purchased under registered sale deed dt:23.01.2007 from the owners namely Ch. Usharani and V.Vijayaramani and ever since the purchase they got entered their names in the revenue records and using the said land for placing the lorries as they are engaged in transport business. They complained that the accused who are father and sons have been constantly troubling them by interfering with their property and when questioned by the petitioners they were threatening them with dire consequences. They also alleged that accused No.1 tampered the sale deed dt:12.08.1930 by correcting the S.No.21-7 as S.No.26-1 in his document to grab the property belonging to them and filed the tampered sale deed in I.A.No.714/2006 in O.S.No.212/2006 on the file of Senior Civil Judge, Gajuwaka. The complainants requested the police to take action. The police of Gajuwaka P.S registered Crime No.440/2012 against the accused for the offences under

Sec.468, 471, 341, 506 r/w 34 IPC and commenced investigation.

Aggrieved, the petitioners/accused filed the instant petition to quash the FIR.

3) Heard arguments of Sri V.Surendra Reddy, learned counsel for petitioners; learned Public Prosecutor for the State (Andhra Pradesh) and Sri A.Prabhakar Rao, learned counsel for respondents 2 and 3.

4) Seeking quashment of FIR learned counsel for petitioners argued that in respect of the very same property in an extent of Ac.0-50 cents covered by S.No.161/12 of Chinagantyada village, Gajuwaka, Visakhapatnam, the vendors of the two complainants who are none other than their daughters filed O.S.No.213 of 2006 on the file of Senior Civil Judge, Gajuwaka seeking perpetual injunction against the first accused alleging that they purchased the suit schedule property under registered sale deed dt:12.07.2006 from Avireddy Pydamma and 12 others and conducting transport business in the said property and the defendant tried to trespass into the same. The first accused who is the defendant therein contested the suit taking the plea that he is the owner of the suit property having purchased an extent of Ac.0-54 cents from Sirasapalli Chinnaya and Kunchalu in the year 1930 and he filed suit—O.S.No.174 of 2002 on the file of Junior Civil Judge, Gajuwaka against the vendors of the plaintiffs and the plaintiffs have no right, title or possession

over the suit schedule property. Pending suit, plaintiffs therein have sold the suit schedule property to the two complainants who are their mothers under registered sale deed dt:23.01.2007 and the accused No.1/defendant brought the same to the notice of the Court. After full-fledged trial, the suit was dismissed holding that the plaintiffs have no possession and title over the suit property and the subsequent purchasers have not been added to the suit. Learned counsel argued that in view of the judgment of a competent Civil Court holding that the vendors of the two complainants have no title or possession, the complainants in their turn cannot agitate that the accused are trying to trespass into the suit land or that he forged some documents.

a) Learned counsel further argued that two complainants filed W.P.No.28667 of 2012 against the revenue authorities, GVMC Visakhapatnam and accused No.1 in respect of the very same property covered by S.No.161/12 seeking a direction from the Court restraining the respondents from interfering with their possession over the said property. The present A.1/ 6th respondent contested the matter and brought to the notice of the Court that O.S.No.213 of 2006 filed by the vendors of the writ petitioners was dismissed. On that the High Court disposed of the writ petition with the direction that the writ petitioners on one hand and A.1/ 6th respondent on the other shall be bound by the decree passed in O.S.No.213 of 2006 subject to the variations or modifications if any in the

subsequent proceedings. In that view of the matter also, he argued, the complainants cannot allege that the accused committed any offence in respect of the subject property. He argued that few days prior to the disposal of the aforesaid writ petition, the complainants lodged a false report with the police only to harass the accused and therefore, the continuation of the criminal proceedings would amount to abuse of process of the Court and law and therefore, liable to be quashed. He relied upon the decision reported in ***Inder Mohan Goswami and another vs. State of Uttaranchal and others***^[1].

5) Opposing the petition learned counsel for respondents 2 and 3/ complainants argued that the two complainants are owners of the disputed property of Ac.0-50 cents covered by S.No.161/12 having purchased from their vendors Usharani and V.Vijayaramani under registered sale deed dt:23.01.2007 and they have been in peaceful possession and enjoyment of the same. Prior to the sale, when the accused tried to interfere with the said property, their vendors filed O.S.No.213 of 2006 before the Court of Senior Civil Judge, Gajuwaka seeking perpetual injunction against the A.1. Learned counsel submitted that the corresponding old survey number for S.No.161/12 is S.No.26/1A of Chinagantyada village. The A1's father purchased land in S.No.21/7 measuring Ac.0-54 cents under sale deed dt:12.08.1930. The A1 obtained Xerox copy of said sale deed and tampered the Survey Number by correcting the said S.No.21/1 as S.No.26/1 so as to claim the

suit property and filed the said Xerox copy of the sale deed as Ex.B.2 in the suit. He argued that no doubt O.S.No.213 of 2006 was dismissed by the trial Court but as against the said judgment the plaintiff therein filed A.S.No.31 of 2014 on the file of I Additional District Judge, Visakhapatnam and the same is pending. Learned counsel submitted that subsequently the complainants have obtained certified copy of the sale deed dt:12.08.1930 and came to know that the survey number was tampered from S.No.21/7 to S.No.26/1 by accused No.1 and therefore they filed a report dt:21.10.2012 before the Commissioner of Police, Visakhapatnam. Learned counsel further argued that, that the A.1 tampered the Survey Number in sale deed dt:12.08.1930 was clearly observed in S.A.No.31 of 2014 on the file of Debts Recovery Tribunal, Visakhapatnam. He submitted that the complainants stood as guarantors for one M/s. Ganesh Chemicals, who borrowed loan from State Bank of India, Seethamadhara, Visakhapatnam and in that context, the bank took up the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the guarantors by putting in sale of the properties offered as security which includes the subject property covered by S.No.161/12 also. Knowing this, accused No.1 filed S.A.No.31 of 2014 claiming right in respect of that property and some other properties. In the judgment dt:20.11.2014 the Tribunal categorically held that the father of the applicant (A.1) purchased the land in Sy.No.21/7

admeasuring Ac.0-54 cents under sale deed dt:12.08.1930 which has been changed by the applicant erasing the S.No.21/7 to S.No.26/1 in the documents filed in O.S.No.213 of 2006 on the file of the Senior Civil Judge, Gajuwaka, Visakhapatnam. Ultimately the appeal filed by A.1 was dismissed. Learned counsel thus argued that whether A.1 tampered the survey number in sale deed dt:12.08.1930 or not can be known only after thorough investigation by the police and therefore, the investigation may not be stifled.

6) Learned Public Prosecutor also argued in the same lines and prayed to dismiss the petition.

7) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

8) **POINT**: The bone of contention between the parties is in respect of the property covered by present S.No.161/12. In the written statement filed by A.1 in O.S.No.213 of 2006, a copy of which is filed by the respondents/complainants, it is his contention that the present suit land in S.No.161/12 was having a corresponding old S.No.26/1A of Chinagantyada village and his father purchased the said land under sale deed dt:12.08.1930 from Sirasapalli Chinnaya and Kunchalu. He produced Xerox copy of the sale deed which was marked as Ex.B.2. The allegation of the complainants is that A.1

tampered the survey number in that sale deed from S.No.21/7 to S.No.26/1 to claim the subject property and they came to know this fact after obtaining the certified copy from the Sub-Registrar's office. Ofcourse, the suit—O.S.No.213 of 2006 was dismissed wherein there is no discussion about the alleged tampering. The Writ Petition No.28667 of 2012 was disposed of directing the parties to abide by the decree in O.S.No.213 of 2006 and its subsequent proceedings. However, it must be noticed that an appeal is pending as against the decree and judgment in O.S.No.213 of 2006 and therefore, the proceedings have not reached finality. Coming to S.A.No.31 of 2014, the learned Presiding Officer of Debts Recovery Tribunal, Visakhapatnam in his judgment dt:20.11.2014 observed as if father of A.1 purchased land in S.No.21/7 admeasuring Ac.0-54 cents under sale deed dt:12.08.1930 and the applicant (A.1) erased S.No.21/7 to S.No.26/1 in documents filed before the Senior Civil Judge, Gajuwaka in O.S.No.213 of 2006. In the light of the above facts, the crucial point is whether the accused have tampered the Survey Number in sale deed dt:12.08.1930 or not. In my considered view, the said aspect can be decided only after thorough investigation by the police.

9) In ***Inder Mohan Goswami***'s case (1 supra) cited by the petitioners, Hon'ble Apex Court observed that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused but said power

should not be exercised to stifle a legitimate prosecution. As already stated supra, the truth in the allegation regarding the tampering of the Survey Number in the sale deed dt:12.08.1930 which has a bearing on the property rights of the parties can be decided only after a thorough investigation and therefore, in my considered view, it is not apt to stifle the legitimate prosecution.

10) In the result, this Criminal Petition is dismissed and the police of Gajuwaka P.S, Visakhapatnam are directed to complete the investigation expeditiously.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 01.06.2016

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[\[1\]](#) (2007) 12 SCC 1