

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1768 OF 2017

ORDER:

The present Criminal Petition is filed, under Section 482 of the Code of Criminal Procedure, 1973, requesting to quash the First Information Report (FIR) in Crime No.746 of 2016 of Sanjeev Reddy Nagar Police Station, Hyderabad.

2. The petitioner viz., Muhammad Ghouse, describes himself as accused, but as per the contents of the FIR lodged by one P.V. Gopala Krishna, Assistant General Manager of Syndicate Bank, N.S. Road Branch, Hyderabad, Telangana, name of the petitioner is not forthcoming. In fact, in paragraph No.2 of the present petition, the petitioner states that he is counsel for his client viz., Smt. Vaziha Tabassum in O.S. No.677 of 2016, which was filed for cancellation of sale deed, document No.1181/14, dated 13.03.2014, against respondent No.3 herein, who is the *de facto* complainant, and his men on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, and the said Court granted *status quo* on 02.12.2016 in I.A. No.1366 of 2016 and that her client, Smt. Vaziha Tabassum, plaintiff in the above suit, who is a *paradhanasheen* lady, is absolute owner and in peaceful physical possession of the premises bearing No.8-3-168/E/2/1/A in Survey No.128/3, Malik Enclave, Yousufguda, Hyderabad.

3. In paragraph Nos.3, 5, 6, 7 and 8, the petitioner mentioned in the commencing words, thus:

“3. That Petitioner’s client viz., Vaziha Tabasum

... ..

4.

5. That petitioner’s client

6. That Thereafter petitioner’s client

7. That R-3 never issued any notice nor put any lock to petitioner’s client’s property,

8. That petitioner’s client”

4. The offence alleged is punishable under Section 452 of IPC, which is house trespass. The complaint allegations would show that the said house, which is the subject property herein, belonged to one G. Subramanyam Swamy, which is bearing house No.8-3-168/E/2/1/A, consisting of cellar, ground, first and second floors, in an extent of 285 square yards in Survey No.128/3, situated at Yousufguda, Hyderabad. Sri N. Lakshmidhar, Advocate Commissioner, had delivered possession of the subject house property belonging to G. Subramanyam Swamy, to the Syndicate Bank on 10.03.2016, as per the Court orders passed in Criminal Petition M.P. No.4232 of 2015, dated 08.01.2016, in the presence of the Police Officers, Sanjeev Reddy Nagar Police Station and the Syndicate Bank has arranged security through M/s. Akshara Security and Maintenance Services and the security was available through out. The complaint

filed by the Assistant General Manager would show that on 16.10.2016, some unknown persons trespassed into the subject property by breaking open the sealed locks and when the security person objected to the same, he was pushed out and they have locked the property from inside and on receiving the call from the security person, they visited the property, taken photographs of the present position and informed the same to the police and the police accompanied them to the subject property and enquired about the person who has trespassed and the police asked for Court orders and as it was Sunday, they could not produce the same and by enclosing the orders to the complain, the complaint was lodged.

5. The petitioner himself argued as party-in-person contending that he is only Advocate to Smt. Vaziha Tabassum, who is his client in the civil Court concerning which relief therein sought for was the subject property herein. He would submit that Vaziha Tabassum filed O.S. No.676 of 2016 for cancellation of sale deed bearing document No.1181 of 2014, dated 13.03.2014, against the *de facto* complainant herein on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, and the Court was pleased to pass the order dated 02.12.2016 in I.A. No.1366 of 2016 against the respondents herein as she is absolute owner and in peaceful possession of the subject property for the last 17 years.

6. It appears that G. Subramanyam Swamy had contracted loan from the Syndicate Bank and mortgaged the property by deposit of title deeds and that was the reason, when the proceedings under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act'), were initiated, the learned Additional Chief Metropolitan Magistrate, Nampally, has issued warrant of delivery of possession by appointing an Advocate Commissioner, who has duly executed it and delivered possession to the *de facto* complainant - bank on 10.03.2016. The *status quo* order dated 02.12.2016 in I.A. No.1366 of 2016 in O.S. No.677 of 2016 passed by the learned IX Additional Chief Judge, City Civil Court, Hyderabad, was after the Advocate-Commissioner delivered possession to the secured creditor from the owner of the property, who is respondent No.1 in the aforesaid Interlocutory Application and the suit, and as per the provisions of the Securitisation Act, round the clock, security is engaged. Certainly, it cannot be said that there is no allegations worth the name to probe into as to who are the unknown persons pushed away the security person and broke open the lock and entered into the subject property.

7. The learned counsel has placed reliance in **Priyanka Srivastava and another v. State of Uttar Pradesh and others**¹, but it is to be stated that the said authority would not render any assistance

¹. (2015) 6 SCC 287

to the petitioner for the reason that the complaint was directly lodged by respondent No.3 with respondent No.2, basing on which, the crime was registered. Therefore, referring the complaint under Section 156 (3) of the Code does not arise, even taking cognizance of offences by the learned Magistrate does not arise as charge sheet is not yet filed as it is still at crime stage and the investigation is under progress.

i) He has also placed reliance in **S. Khushboo v. Kanniammal and another**². The Hon'ble Supreme Court was dealing with the requirement of taking cognizance of offence of defamation only upon receiving complaint by a person aggrieved under Section 199 of the Code, and in relation to the sexual offences where the offence alleged was punishable under Section 497 IPC.

ii) He relied on yet another decision rendered by the Hon'ble Supreme Court in **Geeta Mehrotra and another v. State of Uttar Pradesh and another**³, wherein the quashment was held to be justified in the context of large number of family members being included in FIR by casually mentioning their names and contents not disclosing their active involvement.

The fact-situation occurring in the aforesaid decisions is altogether different from the one occurring in the present case.

². (2010) 5 SCC 600

³. (2012) 10 SCC 741

iii) The other documents filed by the learned counsel as to SMS/MMS message given by GHMC on 17.03.2017 and the electricity bills and demand notices can only be gone into by the Investigating Officer.

8. Thus, even on merits, it cannot be said that investigation into the crime against the petitioner is abuse of process of law in view of the pendency of civil proceedings.

9. Therefore, the Criminal Petition is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

April 20, 2017.
PV/Mgr

A. SHANKAR NARAYANA, J

