

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.7462 of 2017

ORDER:

The petitioner is the accused in C.C.No.6 of 2017 pending on the file of Additional Judicial Magistrate of First Class, Sathupally. It is outcome of crime No.181 of 2016 of V.M. Banjar Police Station, registered for the offences punishable under Sections 447 & 427 IPC, on the report of the 1st respondent-defacto complainant. The police after investigation filed the final report.

As per the averments in the very report of the defacto complainant in setting the law in motion is that the complainant is native of Tekulapally, running a fancy shop at VM Banjar and 20 years back his father Vankata Rama Rao purchased Ac.2.00 of dry land in Tekulapally Revenue Mandal in S.No.262 from his paternal uncle Narsimha Rao and his father planted mango garden and fenced the stones with wire and they were cultivating the same with peaceful possession and enjoyment. Their paternal uncle Narsimha Rao (accused) got 1 acre land adjoining to the land of the defacto complainant supra. That on 08.11.2016 afternoon at 12.00, his paternal uncle illegally entered into the land of the defacto complainant and destroyed the stones and wire fencing and taken possession of the land and he came to know through the watchman R.Ramaiah through phone and went there and found the fencing was removed. Hence to take action.

The statement before the police is also the selfsame. He is not the eye witness to the said occurrence, but for to say when he went there found the fencing was partly removed. R.Ramaiah, the watchman was examined as LW.2 stated that for the last 2 months

he has been working as watchman of the mango garden of M.Prabhavati wife of Venkata Rama Rao and in his statement dated 09.11.2016 what he stated on the previous day 08.11.2016 when he was at the mango garden at about 12.00 Noon Narsimha Rao/accused entered into the garden and removed and destroyed the fencing between the land of Rama Rao and land of accused and at that time the cattle shepherds i.e., R. Pullarao, his brother R. Satya Narayana, Rachoori Anjinee Kumar and R. Valla Raju who is the brother of LW.2-Ramaiah allegedly witnessed the same and in the evening he has gone to son of Narendra Kumar, the defacto complainant and informed the same and he came therefrom to mango garden and given police report to the police at VM Banjar. What LW.1 in his statement stated about LW.2 Ramaiah informed over phone is contrary to the statement of LW.2-Ramaiah of he went there and informed personally and therefrom defacto complainant came and seen at the evening and went to the police, VM Banjar. The other witnesses Pulla Rao, Rachoori Anjinee Kumar, R. Valla Raju and R. Satya Narayana concerned, what they stated is paternal uncle of Pulla Rao was the watchman LW2-Ramaiah and said Ramaiah informed the incident to say Pulla Rao is not an eye witness and Anjini Kumar concerned, he stated the accused removed the fencing and Valla Raju concerned he stated accused removed the fencing and Satyanarayana stated accused removed the fencing. So therefrom the police filed the final report for the 2 Sections of law of trespass and the so called mischief. However, the fact remains that even prior to the alleged incident the said Narsimha Rao filed O.S.No.53 of 2016 on the file of JCJ, Sathupally, against the defacto complainant-Narendra Kumar, his

brother Naveen Kumar and one Nageswara Rao and he obtained an interim ex parte injunction in I.A.No.177 of 2016 that was granted on 26.05.2016 itself in favour of said Narsimha Rao from his claim of he is in possession and enjoyment of the property and seeking injunction pending suit and the interim order dated 26.05.2016 was again extended on 22.09.2016 till 02.11.2016. Once such is the case, the record shows pursuant to the injunction order, the protection is to the accused-plaintiff against defendant-complainant's any interference with the possession and enjoyment in I.A.No.324 of 2016 in I.A.No.177 of 2016 and Court appointed one B. Srinivasa Reddy, advocate as commissioner and the commissioner filed report dated 27.02.2017 and in the report the plaint schedule is described as Ac.2.30 guntas in S.No.262/A of Tekulapally Revenue Village, Khammam District. In the FIR covered by the defacto complainant's report, the land described is S.No.262 of Ac.2.00 acres and also mentioned the accused got 1 acre land abutting to it. Thus there could not be any much regarding the identity of the land, but for to decide whether there is any trespass or mischief or both or none.

The commissioner's report particularly at Para 10 speaks that there are only 2 poles of the fencing were broken lying at ground and there is nothing noted about any fencing was removed or damaged with fence and poles.

Thus it is not only to say already a civil suit pending and interim injunction obtained though it is subsequently after 02.11.2016 no interim injunction extension application filed and extended, the giving of the report as if there is a trespass with his possession and mischief on 08.11.2016 for the registration of the

crime and investigation and filing of final report is unsustainable from the issue is purely and pre-dominantly of civil in nature which cannot be allowed to convert into a criminal lis with criminal flavour apart from no offence of trespass and mischief made out for the Civil Court earlier granted injunction in favour of accused as in possession of the property, though later not applied for extension to extend and further commissioner's report falsifies alleged mischief.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/accused in C.C.No.6 of 2017.

Consequently, miscellaneous petitions, if any shall stand closed.

Date: 25.10.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

