

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1438 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (Code), is filed by the petitioner viz., Mohammed Ali Islami requesting to quash the First Information Report (FIR) in Crime No.38 of 2017 of Humayunnagar Police Station, Hyderabad City.

2. The petitioner, who is arraigned as accused No.1, alleged to have committed the offences punishable under Sections 447, 427, 323, 504 and 380 of the Indian Penal Code, 1860 (IPC).

3. The crime was registered on the complaint lodged by the *de facto* complainant viz., Mohammad Anus Irfan, respondent No.2 herein, on 07.02.2017.

4. Heard Sri Ch. Janardhan Reddy, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana, and perused the material on record.

5. The submission of the learned counsel for the petitioner is that a false case is foisted against the petitioner alleging the aforesaid offences, though, the dispute in the instant case is purely of civil in nature. He has drawn attention of this Court to the sequence of events that transpired till he purchased the subject property on 18.11.2013.

According to the learned counsel, the *de facto* complainant has no semblance of case at all or right or interest over the subject property which was under litigation earlier as two (2) suits have been filed, by one Smt. P. Susheela David against one D. Manohara, who is no other than her younger sister in O.S. No.889 of 2013, and even earlier thereto, Smt. D. Manohara alias Bujji has filed yet another suit in O.S. No.238 of 2011 against her sister Smt. P. Susheela David besides Writ Petition Nos.15913 and 2618 of 2011, which were disposed of, and also Writ Petition No.3805 of 2017; and, this Court passed an order on 08.09.2011 in W.P. Nos.15913 and 2618 of 2011, directing either parties to approach the competent Civil Court to resolve the dispute depending upon the result of the suit and subject to further orders, if any, in the appeals that may be filed and till then, both were directed to pay property tax.

6. It is his submission that both suits i.e., O.S. Nos.238 of 2011 and 889 of 2013 were disposed of. O.S. No.238 of 2011 filed by Smt. D. Manohara alias Bujji against Smt. P. Susheela David seeking the relief of perpetual injunction, was dismissed, by the learned IX Junior Civil Judge, City Civil Court, Hyderabad, on 01.07.2013, whereas O.S. No.889 of 2013 filed by Smt. P. Susheela David against Smt. D. Manohara alias Bujji and the petitioner herein, was also dismissed as not pressed by allowing I.A. No.12 of 2017 on 04.01.2017.

7. The learned Additional Public Prosecutor for the State of Andhra Pradesh, no doubt, would contend that there is material in the complaint itself to show that the offences alleged against the petitioner require a probe by way of investigation. However, the learned Additional Public Prosecutor has not replied to the civil litigations and the orders passed by this Court in the writ petitions.

8. Photostat copies of the sale deeds filed by the petitioner would require advertence in analysing whether the dispute between the parties herein is of civil nature. The photostat copy of the sale deed dated 24.01.1977 bearing document No.1777 of 1977, would show that Netaji Nagar Co-operative Housing Society Limited, allotted the plot by way of sale on 24.01.1977 to Ms. P. Coelho, daughter of Francis T. Coelho, working as Head Nurse, for a consideration of Rs.1,660/-, admeasuring 332 square yards, bearing Plot No.6. A copy of the plan of the plots managed by the said housing society, is also annexed thereto. The said Ms. P. Coelho sold away the said plot to one Philip Mathews, son of Vinod Philip Mathews, on 18.09.1980 for a consideration of Rs.1,15,000/- and delivered possession thereof to the vendee, who, in turn, sold the said plot to the petitioner herein under a registered sale deed dated 18.11.2013 for a consideration of Rs.91,00,000/- which appears to be housing property, perhaps house was constructed by the petitioner's predecessors in title.

9. The case projected by the *de facto* complainant has been that he purchased the subject property from Smt. P. Susheela David on 31.01.2017 through her General Power of Attorney Holder Dilawar Hussain and possession was also delivered to him and at 1.00 p.m., the petitioner accompanied by one Zubair Khan and other unsocial elements tried to erase his name from the property and thereafter, with physical force, trespassed into the house, assaulted security guard viz., Javed and taken away household articles along with him and the security guard was unable to restrain them as he himself was injured; the petitioner forged certain documents and they were proved to be forged after investigation by the police in Crime No.289 of 2014 and charge-sheet is to be filed and thereby requested the police to take action against the petitioner.

10. The sequence of events referred to above would show that the property was purchased by the petitioner under a registered sale deed and thus, three (3) registered sales have been occurring in the present case, whereas the *de facto* complainant though, stated that he purchased the property in the year 2017 through G.P.A. of Smt. Susheela David, he has not chosen to file copy of the sale deed for perusal of the Court.

11. Be that as it may, one vital circumstance on record certainly cannot be ignored. Earlier also, on the complaint of one Md. Gulam Afroz, concerning the very same subject property, a crime

appears to have been registered in F.I.R. No.298 of 2014, dated 21.11.2014, by the Central Crime Station, Hyderabad, on receiving it from the Law and Order police which was originally registered as F.I.R. No.337 of 2013 of Humayun Nagar Police Station, Hyderabad, where, this Court, by the order dated 09.04.2015, in Criminal Petition No.2993 of 2015, filed by the petitioner herein, granted interim order staying further investigation including arrest of the petitioner till 04.06.2015 and the said criminal petition was disposed of finally on 03.11.2015. For convenience sake, the concluding portion in paragraph Nos.6, 7 and 8 of the said criminal petition is extracted, which is thus:

“6. It is further averred that the executants of the GPA of the 2nd respondent i.e., P.Susheela David claiming the above said property vide alleged will deed dated 3.6.2003 alleged to be executed by Miss Philominio Coelho in her favour and another person by name Manohara, who is the sister of the said Susheela also claiming the said property, and both Manohara and Susheela with rival contentions approached this Court by filing W.P.No.15913 of 2011, which is filed by Manohara questioning the action of the GHMC entering the name of her sister Susheela David in the records. The said Susheela David also filed W.P.No.22618 of 2011 questioning the notice issued by the GHMC and both the Writ Petitions are disposed of by this Court on 08.09.2011 directing parties to file a declaratory suit before the competent Civil Court for relief of declaration of

their title and the successful party there from can approach the GHMC for mutation, till then, both the parties shall pay the property tax in their respective occupation, which shall not be treated as recognition of their respective rights till the dispute relating to the title being decided by civil Court. As per the directions of this Court in W.P.No.15913 and 22618 of 2011, the said Susheela David filed O.S.No.889 of 2013 on the file of the IX Additional Chief Judge, City Civil Court, for declaration of title and possession over the property against her sister Manohara and also filed I.A.No.301 of 2014 for injunction and the same was granted by the order dated 03.06.2014. Against the said order of injunction, the accused/quash petitioner herein filed CMA No.574 of 2014 before this Court and the same was allowed on 07.07.2014 setting aside temporary injunction order in I.A.No.301 of 2014 in O.S.No.889 of 2013, dated 03.06.2014 and the same was become final in the pending suit. It is further averred that the de facto complainant obtained GPA from Susheela David on 03.08.2013 without having any right, title or possession over the house property in question, much before filing of the suit dated 18.11.2013 and in fact the executants of GPA by name Susheela David in favour of the de facto complainant, in the suit filed sought the relief not only for declaration but also for possession of the property and the title not even decided by the competent civil Court. Pursuant to the writ petition directions, there is nothing for the de facto complaint to claim any possession, much less, the alleged trespass against

the person by name Yousuf Khan on the alleged threats and under the guise of the pending crime, there is likelihood of roping the petitioner being in settled possession of the property with title transferring from Manohara, and under the guise of the crime, the police are harassing the petitioner, where the dispute is purely in civil in nature and the FIR is liable to be quashed. It is also averred that on the report of the accused herein against the de facto complainant and others, Humayunnagar police registered the Crime No. 338 of 2013 for the offence punishable under Section 448, 380 r/w 34 of IPC and the 2nd respondent was arrested and enlarged on bail later and the dispute relating to both the crimes are one and the same and based on the agreement of sale also executed by Susheela David, Mohammed Shahnawaz filed O.S.No.404 of 2011 on the file of the III Additional City Civil Court, Hyderabad for specific performance of contract. The said Susheela David also executed earlier G.P.A. dated 17.01.2011 in favour of one Feroz Ali besides Development Agreement of even date and she also executed another agreement covered by O.S.No.404 of 2011 and she executed various agreements to various persons and a cheating case in Crime No.33 of 2014 filed by one Kamaluddin Hirani against Susheela David also pending and thereby the proceedings in Crime No.298 of 2014 of CCS, Hyderabad (old Crime No.337 of 2013 of Humayyunnagar, Hyderabad) is liable to be quashed.

7. From the quash petition proceedings, there is nothing to show that the crime is pending against the petitioner and seeking to quash the F.I.R. In fact, the petitioner filed anticipatory bail application by referring to un-registered crime in Crl.M.P.No.644 of 2015 before V Additional Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad showing the State through P.S., CCS, DD, Hyderabad and the section of law is mentioned as 420 ad 506 IPC and not even 448 and 506 of IPC, while mentioning crime No.298 of 2014, the same was ended in dismissal, as the sections are not prone to maintain anticipatory bail application and the crime is not registered to entertain the application for the offence under Section 420 IPC.

8. Having regard to the above, in the absence of showing the petitioner is specifically arrayed as accused in any of the crime pending anywhere, the question of quashing the F.I.R., so far as the accused is concerned does not arise, but for to work out for any other remedies to him elsewhere.”

12. Thus, this Court, in the earlier dispute, referring to the civil cases as well as writ petitions, quashed the F.I.R., opining that the matter is purely of civil in nature. It appears, the second round of litigation commenced with the present F.I.R. Nothing more is required to discuss further, except to hold that the present F.I.R. is liable to be quashed, when looked at the previous sequence of events, where Smt. Susheela David has not pressed the suit, in

O.S. No.889 of 2013, against Smt. D. Manohara alias Bujji, who is her own sister, and it appears, no suit was laid again and appears to have sold the subject property through a General Power of Attorney Holder in favour of the *de facto* complainant, whereas the suit in O.S. No.238 of 2011 filed by her sister Smt. D. Manohara alias Bujji was dismissed by the learned IX Junior Civil Judge, City Civil Court, Hyderabad by the judgment, dated 01.07.2013.

13. Therefore, the Criminal Petition is allowed quashing the First Information Report (FIR) in Crime No.38 of 2017 of Humayunnagar Police Station, Hyderabad City, against the petitioner alone holding that it is open for the parties to resolve the controversy by approaching the competent Civil Court. It is no doubt true, the offences of trespass and assault have been levelled in the complaint and when examined the previous complaint in Criminal Petition No.2993 of 2015, the very same offence of trespass was levelled besides criminal intimidation punishable under Section 506 of IPC, whereas in the present case, offence punishable under Section 504 of IPC besides the offence punishable under Section 380 of IPC is levelled.

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

A. SHANKAR NARAYANA, J

March 13, 2017.

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