

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.3181 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings in CC.No.166 of 2011 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam. The offences alleged are under Sections 447, 427, 506, 323, 509 read with Section 34 of the Indian Penal Code, 1860.

2. Heard the counsel for the petitioner and the learned Public Prosecutor appearing for the first respondent. None appears for the second respondent.

3. The averments in the complaint are that the complainant purchased 2250 sq. yards site covered by Sy.No.134/3 of Kurmannapalem in the year 2005, by way of registered deed and immediately constructed compound wall on three sides and erected gate on South-East side and constructed a tin sheet shed and also obtained electricity supply. He also erected a hut for the watchman's residence and by engaging a watchman, he has been enjoying the site with absolute rights. While so, the accused along with others filed a case against him, on which a Commissioner was appointed and survey was conducted on the site and it was found that on the Northern side of 2250 sq. Yards, purchased by the complainant, the petitioner and six others have their sites and the surveyor submitted his report, stating that the land of the complainant and the land of the other persons is different. Since then, there was no interference by the petitioner and others and since 2007, the complainant has been

enjoying the property. But about three years later i.e. 06.01.2010 the petitioner and others, along with 20 – 30 goondaas and rowdies highhandedly tried to trespass into his site at about 5 Hrs. He escaped and informed the police, who swung into action and brought the petitioner and six others to police station, conducted enquiry and learnt that civil cases are pending and directed the petitioner and others not to interfere with the site till the said cases were disposed of. But at the time when the police were busy i.e. 07.10.2010, the petitioner and others, taking advantage of the business of the police, came to the site on 08.01.2010 and demolished the gate on the South-East of his site and also compound wall to some extent. They also threatened to kill the watchman, who tried to prevent them. The watchman, with fear informed the complainant and then his wife and himself went and tried to stop their highhanded act and they pushed him to the ground and hit with legs and hands.

4. The counsel for the petitioner submits that the complaint is totally a false complaint and he draws the attention of this Court to the statements recorded by the police during investigation in this case.

5. L.W.3, who is one Gandham Gandhiji, gave statement that he knows the complainant. The complainant took him to photo studio and got photos. He has given him Rs.50,000/- and directed him to go to the office of the Sub-Registrar and that an advocate by name Pragada Satyanarayana would come there and asked him to do as told by him. He went to the Sub-Registrar's office at Gajuwaka, on 02.04.2005 and the advocate came there. The heirs of A.K. Mohiddin and other persons came there. The pleader got issued Rs.50,000/- through him

to them and later in the office of the Sub-Registrar, got scribed GPA in his name in respect of 2250 sq. yards covered by Sy.No.134/3 and got registered the GPA. He was not given information at first, in respect of the registration. He does not know the site in respect of which GPA was registered. After 20 days i.e. 23.04.2005, the complainant took him to the office of the Sub-Registrar and got transferred the said site, by way of document No.2454/05, dated 23.04.2005. He further stated that all that was done by the complainant, wantonly without any bad intention. The complainant also promised that nobody will be victimised with the help done by him and obtained his signature.

6. The counsel contends that the statement of L.W.3 itself would show the fraudulent act committed by the complainant and having committed such fraudulent act, he now claims that the said site belongs to him and files this false complaint.

7. The statement of L.W.4, who is one Vanapati Venkata Bangaru Raju, is to the effect that he sold Plot No.12 to one Y. Sitamahalakshimi and other plots to other persons. The statement of L.W.5, which is of one Md. Hanifa, is that he is working as Gunman in Indian Army. His father sold Ac.1.00 covered by Sy.Nos.134/1 and 134/3 to Yelamanchili Narsaveni and five others, in the year 1983 and their brothers and sisters are aware of it. The above mentioned six persons divided the said one acre into plots and except 3 plots, sold all the other plots to one Bangaru Raju, by way of GPA. The said Bangaru Raju again sold the said plots. While the matter stood thus, in the year 2005, one Pragada Satyanarayana, Advocate and Gandham Gandhiji, came to them and said that their father died and the

registration in respect of 2250 sq. yards in Sy.No.134/1 and 134/4 was not done since 1983 and asked them to execute a GPA, assuring that they would have no problems and paid Rs.45,000/- for their expenses. Believing that, they executed a GPA in respect of land sold by their father in favour of Gandham Gandhiji, as representative of Yalamanchili Narasaveni. He stated that they did not execute GPA in respect of 2250 sq. yards site, to sell again. He expressed that they cheated them, stating that they purchased from their father.

8. The statement of L.W.6, who is one Boddeti Nagamani, shows that the complaint is residing near their house. There is a vacant site nearby, admeasuring 2250 sq. Yards, with a compound wall around it. Some days back, some persons came to the site and proclaimed that the site belongs to them and court orders are in their favour and also informed the same to all neighbours. To commence work in the plot, they stacked cement, bricks etc. While JCB was entering into the land for levelling the land, the axis of the said JCB hit the compound wall and some part of the compound wall was damaged. The complainant filed a complaint stating that the site belonged to him.

9. Hence, considering all the above statements, it can be said that the complaint is filed only in order to carry forwards the interest which they obtained in the site by virtue of the fraudulent transaction and that there are cases pending between the parties also. The allegations in the complaint are proved to be false by virtue of the statement of L.W.6, who stated that the compound wall was dismantled accidentally and that it was not done intentionally by the petitioner and others.

10. The counsel for the petitioner also relies on a judgment of this Court in WP.No.12657 of 2012 dated 20.07.2017, which is filed by one Y. Laxmi Rajendra Kumar, against the complainant and others. He contends that there was a direction given to the police to take appropriate action against the complainant herein, who is arrayed as respondent No.7 in the writ petition.

11. A perusal of the aforesaid order shows that the acts of the complainant were *prima facie* believed by this Court. The counsel also filed an order of the Junior Civil Judge, Gajuwaka in IA.No.1760 of 2005 in OS.No.711 of 2005 dated 30.10.2007, wherein the Court below, by looking into the documents filed on either side, held that the sale deeds of the petitioner therein, who is Polisetty Saraswathi and the respondent, who is the complainant in the case are covered by Sy.No.134/3. The observation therein was that the land belonging to Yalamanchili Narasaveni and five others was the northern boundary to the land covering an extent of 2250 sq. yards. The contention of the petitioner therein is that she is the owner of land admeasuring 225 sq. yards.

12. Hence, from the above, it can be understood that the disputes with regard to the ownership of the subject land have been going on between the parties and this complaint is filed in order to redress the grievance of the complainant in respect of the said land, which he already started to agitate before the civil Court. It appears that it is a case of purely civil nature. Hence, continuation of further proceedings would only result in abuse of process of law.

Hence, in the above circumstances, the criminal petition is allowed and the proceedings in CC.No.166 of 2011 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam, against the petitioner, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December , 2017
DSK

T. RAJANI, J

