

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1367 OF 2017

ORDER:

The petitioner herein, who is sole accused in Calendar Case No.587 of 2016, on the file of the learned XXIII Metropolitan Magistrate, Rajendranagar, Cyberabad, requests to quash the proceedings in the said Calendar Case under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioner alleged to have committed the offences punishable under Sections 447, 427 and 341 IPC.

3. Sri Syed Naimullah, learned counsel for the petitioner, pleaded innocence and false implication of the petitioner. According to him, it is purely a civil case converted into a criminal case and, in fact, only remedy on civil side would lie; that the petitioner, who is owner of the site, has been making constructions in the said area, but not in the area belonging to respondent Nos.2 and 3, who are *de facto* complainant and eye-witness to the occurrence, respectively, and the allegation of encroachment, if any, is made, the same has to be decided by a Civil Court, hence, to quash the proceedings.

4. The learned Additional Public Prosecutor for the State of Telangana, opposed the request stating that it is nothing but obstructing the way of the *de facto* complainant and others and charge sheet is already filed and criminal case be allowed to continue and the petitioner can take the defence available to him.

5. Perused the material on record viz., complaint, charge sheet and statements recorded under Section 161 of the Code.

6. Substantially, the allegations have been that there is a 25 feet wide road to the east of the plots purchased and owned by the respondents, whereas on all other three sides, neighbours plots are located. During the absence of respondents on their business and later when went to their plots, they found that 25 feet width road towards east of the plots was occupied and the petitioner was constructing five rooms blocking the road portion and, therefore, sought to take action.

7. It is no doubt true that, there has been no physical assault, nor verbal exchange or altercation, but, the very fact that the area intended for use as road for the respondents was occupied and even constructions have been raised blocking the way, there is every right for the respondents to complain about wrongful restraint at least. Hence, it is a case, where factual aspects require to be probed, which can be done during trial by examining the witnesses.

Therefore, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 28, 2017.

Mgr