

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

CRIMINAL PETITION No.3394 of 2017

ORDER:

The petitioners are accused Nos.1 to 4 of C.C.No.8 of 2016 on the file of Additional Judicial Magistrate of First Class, Nandigama, Krishna District, maintained the quash petition mainly against the 2nd respondent-complainant. It is outcome of crime No.249 of 2015 of Kanchikacherla Police Station, Krishna District, registered for the offences punishable under Sections 341, 447 & 506 r/w 34 IPC with averments that on that day accused Nos.1 to 4 supra trespassed into the site of the complainant and threatened him with dire consequences. The police having registered crime filed the final report in December 2015 and the learned Magistrate has taken cognizance for the offences supra against the accused on 06.01.2016. The police final report shows one Kristafar Columbus of Machavaram, Vijayawada, has purchased an extent of Ac.0.08 cents of vacant site at SC Colony, Kanchikacherla Village, from one Katta Krishna on 23.10.2006 and subsequently from Kristafar Columbus, the defacto complainant K.Samuen purchased vide registered document and the site with door No.55-A. Because complainant was busy with pre occupied works he was not in the recent past visited his site and 2 days back he came to the site and observed that all accused who are the family members of late Krishna father of A.1, A.3 & A.4 criminally trespassed and occupied having constructed house with bricks and obtained current service and on seeing the complainant they abused in filthy language in filthy and wrongfully restrained him by threatened with dire consequences to do away. From the above

police final report or from the complaint, the date and time of the alleged trespass not mentioned.

Coming to the part II case diary statements of the witnesses examined during investigation concerned, even the defacto complainant's statement during investigation speaks the accused persons were obstructing him to enter into the site and threatening to do away, it is not for the first time on the date of complaint and on any specific date earlier even much less in the presence of any person. What LW.2-A. Bikshalu stated is complainant purchased from Kristafar Columbus. He is not even eye witness, but for saying what the complainant informed him as hear say so also by LW.3-M.S. Rao, LW.4-G. Dhornesu and LW.5-G.Lourdhu and Lws.7 & 8 are the IOs. Thus, there is no even any single witness of the alleged occurrence of any wrongful restraint or criminal intimidation concerned much less for date and time of the alleged trespass and how long back to say whether the complaint is in time or not.

The contentions in the quash petition are that it is a false case foisted and it is sheerly a civil dispute and petitioners/accused are in settled possession in their own right also placed reliance on the plaint copy and injunction order in favour of the accused in I.A.No.526 of 2016 in O.S.No.175 of 2016 and also copy of tax receipts for the property paying by accused with mutation in their name.

In fact one of the tax receipt of 2005-2007 shows in the name of Katta Krishna, father of A.1 & A.3, the property is mutated and tax receipt of March 2015 is in the name of Katta

Tirapathamma wife of Krishna, mother of A.1 & A.3 and so far as March 2014 tax receipts and even the civil suit filed was in 2016 by these accused persons against Kristafar Columbus and the defacto complainant-the two defendants with claim that plaintiffs 1, 2 & 4 and late Katta Krishna purchased the Ac.0.08 cents on 10.10.1983 under registered sale deed No.1218/1983 of SRO, Kanchikacherla, with house therein and mutated in the name of elder of them viz., Katta Krishna from sale deed obtained in his name and thereafter they constructed buildings, obtained electrical connection, drinking water supply connection and the same are also assessed to tax and they are residing with right by paying taxes etc., and the respondents/defendants are trying to interfere without any right.

The temporary injunction order speaks therefrom of making out a prima facie case and are entitled to the injunction relief with prima facie title covered by the sale deed and the tax receipts and electrical receipts, water charges, receipts etc., showing possession and enjoyment.

Thus a purely civil dispute wanted to convert into a criminal prosecution by the complainant with distorted version and the police did not evince proper interest in investigation of the case fairly but for mechanically in filing the final report of the civil dispute.

Having regard to the above, the Criminal Petition is allowed by quashing the proceedings against the accused/petitioners and their bail bonds stand cancelled.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.10.2017
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