

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.12805 OF 2016

ORDER:

Requesting to quash the First Information Report in Crime No.22 of 2016 of S.R. Nagar P.S., the present petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The petitioner is arraigned as accused No.2 in the aforesaid crime. The petitioner along with accused No.1 alleged to have committed the offences punishable under Sections 120B, 403, 406 and 420 of I.P.C.

3. Heard Sri G. Vasantha Rayudu, the learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

4. The submission of the learned counsel for the petitioner is that the complaint filed by the 2nd respondent/complainant and referred to Police under Section 156 (3) of the Code by the learned Magistrate do not disclose any allegation that the petitioner committed any of the offences alleged against him.

5. The submission of the learned counsel for the petitioner is that the petitioner is the tenant of one Mr. V.S.Harischandra Prasad, having inducted into possession under a Lease Deed, dated 28.2.2013, in respect of fourth floor by obtaining Value Added Certificate

running business in the name and style of R.K. Solar Systems; that the complainant only on 14.11.2015 raised a dispute contending that he became the owner of half of the portion named 'Gaja Lakshmi Estates' by virtue of the Development Agreement-cum-General Power of Attorney between the complainant and the 1st accused. It is his submission that to prevent the abuse of process of law, by conducting vexatious prosecution of the petitioner, to quash the proceedings.

6. The submission of the learned counsel for the petitioner is that within seven days time provided in the Legal Notice got issued by the de-facto complainant, the petitioner herein has answered it by getting a reply issued on 21.11.2015 making it clear that he entered into Lease Agreement with Mr. V.S.Harishchandra Prasad expressing ignorance of Memorandum of Understanding between the complainant and Mr. V.S.Harishchandra Prasad, electricity connection is in the name of Mr. V.S.Harishchandra Prasad and if there is any issue, both of them settled the same and he is unrelated to the said issue.

7. Now, the question is whether the complaint would contain any allegations *prima facie* to show that the petitioner herein, who is the 2nd accused committed any cognizable offence.

8. The offences alleged against the petitioner and 1st accused are punishable under Sections 120B, 403, 406 and 420 of IPC.

9. A perusal of the material papers filed along with the complaint petition would show that the complainant has filed Electricity Bill-

cum-Notice issued by the APCPDCL, dated 4.2.2013 requiring Satya Harischandra Prasad to pay a total sum of Rs.500/- towards consumption charges by 18.2.2013 indicating that house number as well as locality and other relevant details. The Lease Deed between the complainant and the said V. Satya Harischandra Prasad was entered into on 28.2.2013 with relevant terms and conditions signed by the parties to the Lease Deed as well as the witnesses attesting the Lease deed without entering into whether Lease Deed is legal or otherwise, it is clear that the petitioner was inducted into possession by V.Satya Harischandra Prasad by virtue of the said Lease Deed, as contended by the learned counsel for the petitioner in the month of February, 2013.

10. The VAT Registering Authority, Central Registration Unit, Hyderabad issued Form in VAT-105 in the name of R.K. Solar System, which the petitioner is operating in the said premises. It is dated 6.3.2013. Thus, the things went on for more than two years eight months and only on 14.11.2015 the complainant got issued legal notice to the petitioner informing him that the complainant owns half of the share in the fourth floor by virtue of Development Agreement-cum-General Power of Attorney and required to furnish copy of the Lease Agreement within one week and in default the complainant will be constrained to initiate both civil and criminal cases against the petitioner for his illegal occupation. The said notice replied on 21.11.2015 by the petitioner bringing out the details as to the said Mr.

V. Satya Harischandra Prasad inducting the petitioner into possession and the petitioner obtained electricity connection standing in the name of V. Satya Harischandra Prasad and denying the illegal occupancy. This is one part of the story, which could be gathered from the material placed on record, in support of the submission made by the learned counsel for the petitioner.

11. Now, the question is the complainant did not express any demur for more than two years eight months and only thereafter, he has come forward to issue a legal notice and having received reply, then filed a private complaint with the III-Additional Chief Metropolitan Magistrate, City Criminal Courts at Hyderabad on 31.12.2015. It has come up in the legal notice referred to in the above got issued by the complainant, that he has filed a suit in O.S.No.824 of 2014 on the file of VII-Junior Civil Judge, City Civil Court, Hyderabad and it was decreed on 31.8.2015 granting injunction restraining Mr. V. Satya Haaishandra Prasad from alienating the suit schedule i.e., half share in the fourth floor.

12. Admittedly, even according to the complaint averments, it was only an injunction that was granted and it appears the complainant has not sought for declaration of his title in the suit referred to. It appears that the 1st accused was arrayed as defendant, there is no reference to the petitioner herein in the relevant paragraph i.e., paragraph-8 of the complaint. Even otherwise when once he resorted to civil remedy he ought to have sought appropriate relief not only against the 1st

accused but also against the 2nd accused and in case there is any dispute over the title ought to have sought for appropriate relief and ought to have proceeded with the execution proceedings and ought to have forceful ejectment also.

13. Even otherwise, if there was any breach of terms and conditions of Development Agreement-cum-General Power of Attorney and in case of deception from the very beginning by the 1st accused, the complainant has got liberty to initiate criminal proceedings, but not against the petitioner, who is arraigned as 2nd accused. In the presence of Lease Deed, it cannot be said that the petitioner is in illegal possession unless a competent Civil Court declares the same as illegal.

14. Thus, viewed from any angle, it cannot be said that the allegations in the complaint do constitute commission of cognizable offence by the petitioner. It is made clear that so far as the role of the 1st accused is concerned, no comment is made and confined only to the extent of the petitioner/2nd accused in the aforesaid crime. There is every reason to accede to the request of the learned counsel for the petitioner to hold that the investigation into so far as the petitioner/2nd accused is concerned amounts to abuse of the process of law.

15. For the aforesaid reasons, the Criminal Petition is allowed quashing the First Information Report in Crime No.22 of 2016 of S.R. Nagar P.S., so far as the petitioner/accused No.2 is concerned.

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

A. SHANKAR NARAYANA, J

Dt. 24.04.2017
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