

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16485 OF 2016

AND

CRIMINAL PETITION No.16486 OF 2016

COMMON ORDER:

The petitioner in Criminal Petition No.16485 of 2016 is arraigned as accused No.1 and the petitioners in Criminal Petition No.16486 of 2016 are arraigned as accused Nos.2 and 3 respectively.

2. For convenience sake, they are referred to as accused persons with their number rather than referring to them as petitioners. Accused Nos.1 and 2 are the father and son and accused No.3 is the father-in-law of the accused No.2. They all request to exercise the inherent power under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') and to quash the First Information Report in Crime No.415 of 2016 of Alwal P.S., Cyberabad. They alleged to have committed the offences punishable under Sections 447 and 427 of IPC read with Section 34 of IPC.

3. Heard Sri N. Naveen Kumar, the learned counsel for the petitioners/accused in these two criminal petitions, Sri V. Hari Haran, the learned counsel for the 2nd respondent/de facto complainant, and the learned Additional Public Prosecutor for the State of Telangana.

4. Certain facts are relevant to assess whether the request made by the petitioners can be acceded to or not.

5. It is to be noted that quashment is sought for concerning the First Information Report. The petitioner has filed the following documents:

(1) Copy of Sale Deed, dated 8.7.2015, said to have executed by Sri Chamarthi Mallikarjun s/o. Late Sri Chamarthi Ramachandra Raju, Sri P. Srinivasa Varma S/o. Late Sri P.S. Raju in favour of Sri Podduturi Mahender Reddy S/o. Late Sri P. Narsimha Reddy and Smt. Podduturi Swaroopa W/o. Sri P. Mahender Reddy.

(2) Copy of Agreement of Sale-cum-Irrevocable General Power of Attorney with Possession, dated 6.5.2014 executed by Sri Chamarthi Mallikharjun s/o. Late Sri Chamarthi Ramachandra Raju and Sri P. Srinivasa Varma S/o. Late Sri P.S. Raju in favour of M/s. Sri Venkateshwara Buildcon, consisting of 1673.67 sq. mts or 2002.0 sq. yards out of Ac.0-38 guntas in Sy.No.560 located at Alwal Village, Malkajgiri Mandal, GHMC Municipality, R.R. District.

(3) Copy of First Information Report in Crime No.97 of 2016, dated 26.2.2016 lodged by one Sri A. Lakshma Reddy against Hari, Muthyalu, Hanumanthu, Venkat Reddy, Mahender Reddy and others.

(4) Copy of plaint in O.S.No.1702 of 2015 filed by one Sri V.V. Naidu and 2nd respondent (Sri V. Mahindra) against Sri Mamidi Ravinder Reddy, Sri K. Suman Kumar, Sri Ch. Laxman Rao, Sri T. Sampath Rao and Sri Gandra Venkateshwar Rao for perpetual injunction on the file of VII-Additional Senior Civil Judge, Rangareddy District. The plaint was verified on 7.12.2015. In the said

suit, I.A. No.1166 of 2015 was filed under Order 39 Rules 1 & 2 of C.P.C. and ex parte injunction was granted.

(5) Copy of plaint in O.S.No.389 of 2016 on the file of XVI-Additional District Judge, Rangareddy District at Malkajgiri, filed by accused No.3, his wife Smt. Podduturi Swaroopa, accused No.2 and his wife Smt. Podduturi Lipika Reddy against Smt. P.Prabhavathi, Sri P. Sriram Varma, Sri V.V. Naidu, Sri V.Mahindra, Sri P.Sateen Varma, Sri P. Subhash, Sri P.V. Suresh and Sri M. Srinivasa Rao. The said suit was filed in the month of April, 2016 along with I.A. No.392 of 2016 and *status quo* order was granted on 29.4.2016.

(6) Copy of order under Section 145 of Cr.P.C. filed by the 1st respondent and Tahsildar, Malkajgiri Mandal, R.R. District against the first party and second party. The first party consists of accused No.3's group, whereas the second party consists of respondent No.2's group. The said order was passed on 2.7.2016 by the Sub-Divisional Magistrate and Special Grade Deputy Collector and Revenue Divisional Officer, Malkajgiri Division, Rangareddy District, directing the parties to approach the competent Civil Court for redressal of grievance.

(7) Copy of affidavit in Writ Petition No.16989 of 2016 filed by the 2nd respondent against the 1st respondent herein, Commissioner of Police and accused Nos.1 to 3 in these petitions. The learned Single Judge of this Court passed the following order while disposing of the writ petition:

“In the light of the above settled legal position, it is not open to the police authorities to deviate therefrom or show any tardiness in taking appropriate necessary action after receiving a report alleging a cognizable offence. In the event the offence alleged is a non-cognizable one, the police authorities are bound to follow the due procedure laid down in Section 155 Cr.P.C. In any event, the police authorities must take suitable action in the matter expeditiously. Since this Court is not going into merits of the case, it may not be necessary to issue police to respondent Nos. 4 to 6. However, if any crime is registered for the offence punishable with imprisonment of seven years or less, the police shall follow the judgment of the Apex Court in **Arnesh Kumar v. State of Bihar & another** [2014 (2) ALT (CrI.) (SC)].”

(8) Copy of Contempt Petition and affidavit in C.C. No.1728 of 2016 filed by 2nd respondent herein against the Commissioner of Police and the Station House Officer, Alwal P.S., Cyberabad, complaining inaction in registering the First Information Report despite the order of this Court passed in Writ Petition No.16989 of 2016.

6. Now, it is relevant to refer to certain other facts.

The petitioner would state that originally an extent of Ac.2-00 guntas in Sy.No.560 of Alwal Village was granted as Inam in favour of one Mr. Raja Lingam, covered by Sy.No.560 of Alwal Village, but, on ground only Ac.1-04 guntas was available. The said Raja Lingam entered into an Un-registered Sale Deed with one Mr.C. Ramachandra Raju in respect of Ac.0-38 guntas besides executing an irrevocable General Power of Attorney in his favour. Since the said Raja Lingam failed to execute the Sale Deed, Sri C. Ramachandra Raju filed a suit for specific performance in O.S. No.290 of 2009 on the file of II-Additional Senior Civil Judge, Rangareddy District. During the pendency of suit, Raja Lingam died and his legal heirs came on record

and they compromised the suit before the Lok Adalat on 28.01.2005. Accordingly, Registered Sale Deed was executed in favour of Sri C. Ramachandra Raju, bearing Document No.36 of 2012 of S.R.O., Secunderabad, but it was registered in the year 2012, though executed on 10.11.2008, followed by a Codicil, dated 19.04.2012, through which the said property was bequeathed in favour of his son Mr. Mallikharjun. The petitioners 1 and 2 claiming title through the said Mallikharjun. In the Sale Deed even Sri P. Srinivasa Varma has also joined as 'consenting party' since there was Memorandum of Understanding entered into between him and Mr. C. Ramachandra Raju.

7. While the things stood thus, 2nd respondent and accused No.3 have applied for regularization under the Layout Regularization Scheme of Government of Telangana. When they intended to lay compound wall and levelling the property, the 2nd respondent along with his henchmen interfered with his possession claiming right over the said property, on 17.4.2016 and they learnt that the 2nd respondent made claim over non-existing land by obtaining ORC in favour of Raja Lingam in respect of left over land of Ac.0-36 guntas out of Ac.2-00 guntas and falsely created documents in their favour only to take away the property owned by the petitioners, and, therefore, the ORC is illegal. It is also stated that the 2nd respondent is seeking to rely on General Power of Attorney issued by Sri C. Ramachandra Raju to the consenting party in the Sale Deed. According to the

petitioners, on verification with the Stamps & Registration Department, they found out that no document as such was being tallied with Sale Register and the Sale Register on that date starts from Sl. No.5211 only. Then, in the complaint petition the petitioner refers to registration of First Information Report in Crime No.97 of 2016 against the 2nd respondent and others filed by Mr. Laxma Reddy alleging that on 26.2.2016 they interfered with his possession and threatened him with dire consequences.

8. Later, they refer to the suit filed by the 2nd respondent and obtaining *ex parte* injunction, but the petitioners claim that they have already purchased the subject property, but they were not made as party respondents deliberately by the 2nd respondent and obtained *ex parte* injunction against the petitioner's vendors.

9. They refer to the suit in O.S. No.389 of 2016 and obtaining *status quo* order against the *de facto* complainant and others. Then, they refer to the proceedings under Section 145 of Cr.P.C. and the result thereof.

10. Later, they refer to the Writ Petition No.16989 of 2016 and also Contempt Case No.1768 of 2016 filed by the 2nd respondent. Therefore, they state that though, the 1st petitioner is not at all involved and has no business, but only to see that the petitioners 2 and 3 would act to the dictates of the 2nd respondent, the 2nd respondent

deliberately implicated the 1st petitioner, as the 1st petitioner is a public servant.

11. The learned counsel for the petitioners would, while referring to all these events and making submissions on each of the documents referred to in the petition, submit that none of the offences i.e., either Section 447 of IPC or Section 427 IPC read with Section 34 of IPC would stand against the petitioners besides the offences under Section 5-A of the Telangana Land Grabbing (Prohibition) Act, and the First Information Report read as a whole would not disclose the commission of any cognizable offence by the petitioners, and, therefore, sought to quash the First Information Report.

12. The learned counsel for the petitioners has also placed reliance on the following rulings:

(1) **Indian Oil Corporation v. NEPC India Limited**¹.

(2) **V.Y. Jose v. State of Gujarat**²

(3) **Uma Shankar Gopalika v. State of Bihar**³

(4) **G. Sagar Suri v. State of U.P.**⁴

13. The learned Additional Public Prosecutor for the State of Telangana strongly resisted the request and so also the learned counsel for the 2nd respondent/*de facto* complainant. Their common submissions are that despite *ex parte* interim injunction orders were in

¹ (2006) SCC 736

² (2009) 3 SCC 78

³ (2005) 10 SCC 336

force, the petitioner's vendors attempted to interfere and remove the 'kadi', which can be construed as 'fencing' and thus, the offences have been levelled. It is according to the learned counsel, the petitioners fabricated the documents with a view to grab Ac.0-38 guntas of land, which the 2nd respondent has purchased under the guise of ORC issued for Ac.1-04 guntas of land. At this stage, it is to be noted that petitioners in both petitions taken similar stand stating that the 2nd respondent, taking advantage of ORC granted in favour of Raja Lingam for Ac.1-04 guntas, creating documents claiming right over the subject property. In fact, the subject property, which the petitioners 2 and 3 alleged to have purchased under the Sale Deed afore mentioned is only for an extent of 710 sq. yards.

14. In **Indian Oil Corporation v. NEPC India Limited** (1 supra), relied on by the learned counsel for the petitioners, the Hon'ble Supreme Court while observing that there is growing tendency in business circles to convert purely civil disputes into criminal cases on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors, and such tendency is seen in several family disputes also and also the impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement, held, that any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure

⁴ (2000) 2 SCC 636

through criminal prosecution should be deprecated and discouraged, referring to the earlier ruling in **G. Sagar Suri** (4 supra).

15. In **V.Y. Jose** (2 supra), the Hon'ble Supreme Court while cautioning that superior courts, with a view to maintain purity in the administration of justice should not allow the abuse of process of the Court and it has a duty in terms of Section 482 of the Code to supervise the functionings of the trial courts, held that a matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short cut of executing a decree which is non-existent.

16. In **Uma Shankar Gopalika** (3 supra), the Hon'ble Supreme Court in the fact-situation occurring therein opined that allowing police investigation to continue would amount to abuse of process of the Court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the power under Section 482 of Cr.P.C. which it has erroneously refused.

17. In the present case, though, the Occupancy Certificate issued in favour of Raja Lingam was for an extent of Ac.2-00 guntas, which he held as Inam, but on ground Ac.1-04 guntas was being found and both the parties i.e., the accused and the *de facto* complainant levelling allegations and counter allegations that taking advantage of the Occupancy Certificate issued, claim is being made for a non-existent land, when viewed intrinsically, allegations levelled by both parties

against each other that the stamps have been found to be non-existent and fabricated and even the removal of 'kadi' would all lead to opine that the allegations in the complaint invariably warrant continuation of investigation.

18. Further, when examined in the background of these events in sequence and more particularly, this Court in W.P.No.16989 of 2016 given direction to the concerned Station House Officer, which direction is extracted hereinabove, certainly, it is difficult to consider at this stage that proceeding with further investigation would amount to the abuse of process of law.

19. Therefore, unless evidences are collected by the investigating officer, it is premature at this stage to accede to the request of the petitioner.

20. It is open to the petitioners to submit their title deed and other relevant documents in relation to the source of title of their vendors and predecessors-in-title before the investigating officer to enable him to arrive at a just and correct opinion. In view of the directions of this Court in Writ Petition No.16989 of 2016 to the investigating officer to follow the procedure inlaid by the provisions of Section 41-A of the Code and the guidelines laid down by the Hon'ble Apex Court in **Arnesh Kumar** (1 supra), no further directions need be given to the Station House Officer concerned.

21. There are no merits in the petitions and accordingly both Criminal Petitions are dismissed.

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

A. SHANKAR NARAYANA, J

Date:05.06.2017.

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