

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.10051 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. for quashing the proceedings in Crime No.894 of 2011 of Banjara Hills Police Station, Hyderabad.

The brief facts of the case are that the petitioner is practicing as a Junior Advocate. His wife was granted a DKT patta on 20.10.1995 admeasuring 50 square yards as she was a landless poor person. His wife constructed a basement in the said land. A third party objected for the said construction and tried to grab the land and, therefore, she filed O.S.No.241 of 2011 on the file of II Additional Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction against the third party adding Tahsildar, Shaikpet Mandal as a party and the suit is pending for trial. The trial Court has also granted status quo order on 09.02.2011 in I.A.No.83 of 2011 filed in the above suit. The third party and the Tahsildar, who are the defendants, in the suit are contesting the suit. The Tahsildar, Shaikpet Mandal has filed a false complaint against the petitioner stating that the petitioner has constructed basement with an intention to grab the government land at B.J.R. Nagar, opposite Kothacheruvu. Basing on the said complaint, the Police, Banjara Hills registered a case in Crime No.894 of 2011 under Section 447

of IPC against the petitioner-accused. Aggrieved by the same, the petitioner filed this petition to quash the said proceedings.

Learned counsel for the petitioner submitted that the petitioner's wife was granted a DKT patta admeasuring 50 square yards on 20.10.1995 as she was a landless poor person. The petitioner's wife is ready to produce D-form patta issued in her name, residence certificate issued by the Tahsildar and the application and challans under which the petitioner's wife paid the amount of Rs.78,200/- to the MRO under G.O.Ms.No.59, Revenue, dated 30.12.2014. Learned counsel further submitted that the matter is of a civil nature and the petitioner's wife has got all the documentary proof to the effect that she is the owner of the property and she has got water bills and electricity bills and gas connection. The petitioner's wife has also filed O.S.No.241 of 2011 on the file of II Additional Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction against the third party and the Tahsildar. Therefore, the Tahsildar has filed a false complaint against the petitioner under Section 447 of IPC stating that the petitioner has criminally trespassed into the site belongs to the Government and constructed basement. Learned counsel for the petitioner submitted that after registering the FIR, the petitioner was arrested by the police but on the next day he was released on bail and now he is on bail. Learned counsel for the petitioner further submitted that though the remand case diary dated 10.10.2011 reveals

that the police registered a case against the petitioner under Section 447 of IPC, the trial Court added *suo motu* the provisions under Sections 3 and 6 of Land Grabbing Act.

Learned Public Prosecutor submits that the FIR contains the ingredients under Section 447 IPC and the petitioner may approach the trial Court and file all those documents and prove his case and at this stage proceedings may not be quashed.

The petitioner has not made the Tahsildar as a party in this petition basing on whose complaint the FIR was issued against the petitioner.

At the outset, the case of the petitioner is that he is practicing as a Junior Advocate and his wife was allotted DKT patta admeasuring 50 square yards as she is a landless poor and she was making construction in her land. There was an obstruction from a third party and therefore, she filed O.S.No.241 of 2011 on the file of II Additional Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction against the third party and Tahsildar. The Tahsildar has lodged a complaint against her husband (petitioner) stating that he encroached the Government site and tried to grab the Government land. The complaint was registered by the police and the FIR was issued and the learned Magistrate appears to have taken cognizance of the offence under Section 447 of IPC and also for the offence under Sections 3 and 6 of Land Grabbing Act. At this stage, in the light of the decision of

Apex Court in **C.B.I. v. A.Ravishankar Prasad**¹ wherein the **State of Haryana v. Bhajan Lal**² was referred and certain guidelines have been formulated for exercising provision under Section 482 of Cr.P.C. The guidelines in **Bhajan Lal** (2 supra), are as follows:-

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In **Ravishankar Prasad's** case (1 supra), the Hon'ble Supreme Court, in paragraphs 45 and 48, observed as follows:

45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in proper perspective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court under section 482

¹ (2009)6 SCC 351

² 1992 Supp.(1) SCC 335

Cr.P.C. the trial of this case could not be completed and concluded.

48. In this view of the fact, in the interest of justice we direct that the trial be now completed as expeditiously as possible. The trial court is directed to conduct the trial on day to day basis and parties are directed to cooperate with the trial court. The trial court shall ensure that unnecessary adjournments be avoided and trial be concluded as expeditiously as possible.

In the light of the guidelines of the Supreme Court if the allegations are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, in such a case proceedings can be quashed. In the instant case, learned counsel for the petitioner submitted that there is voluminous documentary evidence to prove that the petitioner's wife is the owner of the land and there is also civil litigation pending before the Court and therefore, she has not trespassed into the Government land. The arguments of the learned counsel for the petitioner would clearly indicate that there is a disputed question of fact. Unless the documents said to have been in possession of the petitioner's wife are taken into consideration, it cannot be decided whether the allegations in the FIR are true or not. When there are disputed questions of fact, the petitioner is given liberty to file all those documents before the trial Court and prove his case. In the light of the guidelines given in the above decisions, this is not a fit case for quashing the proceedings at the threshold.

Accordingly, the Criminal petition is dismissed giving liberty to the petitioner to file all those documents before the trial Court and proceed with the trial.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 26.10.2017
ssp

