

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9003 of 2017

ORDER

This petition under Section 482 Cr.P.C., is filed to quash the proceedings in FIR.No.179 of 2017 pending before Bhimunipatnam Bhimili PS, Vishakhapatnam City registered for the offences punishable under Sections 447, 427 IPC based on the report filed by the respondent No.2 dated 27.06.2017.

The respondent No.2, Smt Rapeti Vasundhara, lodged a complaint dated 27.06.2017 alleging that she purchased Plot Nos.9 and 15 in Narelalla Valasa village of Vidigattu Panchayat (S.No.31/1) in 1996. While she is in peaceful possession and enjoyment of said plots, one Mrs.Dangeti Kalavathi c/o. Rokkam Venkateswara Rao came with a complaint that the said land belongs to them. Thereupon, the 2nd respondent approached Bheemunipatnam Junior Civil Judge Court by filing O.S.35 of 2006 and obtained injunction orders restraining any alienation etc. In spite of injunction orders, Smt D.Kalavathi sold the land and Mr.Karampudi Krishna Murthy trespassed into their land and constructed a wall in plot No.15. The 2nd respondent therefore requested to take action against Krishna Murthy, who is accused in the said crime filed the present petition on the ground that allegations made in the complaint would not constitute any offence. It is purely civil in nature and therefore the proceedings are liable to be dismissed.

This Court ordered notice to respondents but the respondents refused to receive notice and the same was returned. Thus none appeared on behalf of the respondents.

During hearing, learned counsel for the petitioner while reiterating the contentions that a civil dispute was given colour of criminal and the same is abuse of process of court by filing a report with the police and placed reliance on several judgments of Apex Court in ***Kanwal Sood vs. Nawal Kishore and Anr***¹ , ***Rashmi Jain vs. State of Uttar Pradesh and Another***² , ***M.P. Tej Babu vs. State of Telangana and Ors***³ and ***Sajja Prabhakar v. N.Subash and others***⁴.

A bare look at the contents of the complaint shows that there is a dispute with regard to ownership i.e., with regard to Plot Nos. 9 and 15 in S.No.31/1 of Narelalla Valasa village of Vidigattu Panchayat and the respondents approached the Court by filing O.S.No.35 of 2006 and obtained interim injunction. Despite the order, the petitioner trespassed into the land and constructed a wall around plot No.15. The 2nd respondent did not disclose the date of trespassing and construction of wall. It is not known whether the said act was done subsequent to filing of the petition. When a civil litigation is pending before the Court since 2006 filed against one Smt.Dangeti Kalavathi, Karampudi Subhashini and Karampudi Krishnamurthy, the petitioner herein the 2nd respondent ought to have availed the remedy under Order 39 Rule 2-A of CPC for violation of interim injunction. Instead of resorting to such procedure lodged a report with the Police, Bhimili while a civil litigation is pending in the Court of Junior Civil Judge, Bheemunipatnam.

¹ AIR 1998 SC 159

² (2014) 13 SCC 553

³ 2017 (1) ALD (crl.) 677 (AP)

⁴ 2017 (5) ALD 674

The Apex Court in ***Rashmi Jain's case (2 supra)*** the facts are that on 23.03.2009, the applicant met the accused in the market of Bazarganj Saraitareen and asked for his balance amount, but the accused in the presence of two other persons flatly refused to pay the same and threatened the applicant that if he ever asked for the payment again he will be killed and stated that you don't know me. I have not paid to the high and mighty people, who are you. I had to usurp your money and I had done so. Thereafter, she went in a car.

But the court concluded that the aforesaid averment has been made only to foist criminal liability on the appellant by converting a purely civil dispute into criminal act, alleged to have been committed by the appellant. The allegations are absurd and outlandish on the face of it; firstly, the appellant is a lady, a widow, who was not accompanied by anybody else at the time of alleged occurrence and secondly, she, though being a resident of Delhi, misbehaved with number of high and mighty parties with whom she had earlier transacted business at Moradabad. These are allegations which on the face of it, cannot be taken seriously by any reasonable person and quashed the proceedings.

The identical question came up before the Supreme Court in ***Kanwal Sood's case (1 supra)*** where the Supreme Court discussed the scope of Section 441 IPC as under:

“....every trespass does not amount o criminal trespass within the meaning of Section 441 of the Indian Penal Code. In order to satisfy the conditions of Section 441, it must be established that the person entered in possession over the premises with intent to commit an offence.”

Section 441 of IPC defines the Criminal Trespass.

“Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, or having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property, or its possession or use when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit, ‘criminal trespass’.

In the present facts of the case, except alleging that the petitioner trespassed into the land, nothing was alleged. The principle laid down in the above judgments is squarely application to the present facts of the case. Basing on the above said principle, in the absence of any averment to constitute an offence under Section 441 of IPC ‘criminal trespass’ punishable under Section 447 of IPC, proceedings against the petitioner cannot be continued, since it is abuse of process of law. The inherent jurisdiction of this Court is limited. This Court can exercise inherent jurisdiction to prevent the process of abuse of Court or to secure the ends of justice.

Keeping in view the scope of jurisdiction and law laid down in **State of Haryana v. Bhajan Lal**⁵ Apex Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following

⁵ 1992 Supp. (1) SCC 335

guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 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.

According to guidelines 2 and 3, when the allegations made in the complaint does not constitute an offence, the Court by exercising its inherent jurisdiction, quash the proceedings, since the civil dispute is given cloak of criminal offence by abusing the process of Court.

In the result, criminal petition is allowed quashing the proceedings against the petitioner in FIR.No.179 of 2017 pending before Bhimunipatnam Bhimili PS, Vishakhapatnam City being registered for the offences punishable under Sections 447, 427 IPC.

Consequently, miscellaneous petitions pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:26.12.2017
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