

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.4827 of 2011

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C. to quash the proceedings in Crime No.40 of 2008 on the file of the Judicial Magistrate of First Class, Wanaparthi, Mahaboobnagar District.

Petitioners are the accused.

Heard learned counsel for the petitioners, learned counsel for the respondents and learned Public Prosecutor.

The brief facts of the case are that, the 4th respondent herein-P.Krishnaiah lodged a complaint under Section 200 Cr.P.C. against the petitioners as they have trespassed into his house and tried to demolish his wall. He stated in the complaint that his father P.Ramulu has purchased 175 square yards in Sy.No.53/A from the original pattadar Langidi Lachanna through a registered sale deed and the petitioner No.3-P.Shankaramma had filed O.S.No.63 of 2000 for declaration of title, and possession and mandatory injunction for removal of the structures in Sy.No.53/A in an extent of 202 square yards. On 03.05.2008, all the accused and their followers attacked the complainant and tried to demolish the structures in the land. The 4th respondent with the help of villagers resisted their attempts and the accused have scolded him and his wife in their caste names and shifted the material like stones and steel from that place in the presence of two witnesses. The 4th respondent had lodged a complaint to the police, and then the matter was mediated in the presence of Dharma Reddy and Mustaq Hussain. Thereafter, again on 05.05.2008, six coolies

damaged the property of the *de facto* complainant and removed some stones. The complainant had lodged a complaint to police, Maredpally town. The complainant had also taken photographs of the scene of occurrence, and filed before the Court. On these allegations, the learned Magistrate referred the private complaint to police under Section 156(3) Cr.P.C. for investigation. The police investigated the matter and registered a case in Crime No.40 of 2008.

Learned counsel for the petitioners mainly submitted that petitioner Nos.1 and 2 are working as Field Assistant in Junior Civil Judge's Court, Jadcherla and contingent employee in the High Court respectively and petitioner No.3 is the wife of petitioner No.1. The petitioner Nos.1 and 2 were attending to their duties at their respective places, and the 3rd petitioner is the house wife. Therefore, they were not present at the scene of offence at the time of alleged incident. They have also filed some certificates to prove that they were working in their offices at the time of the incident. It is further submitted that there are civil disputes between the parties. The 4th respondent having lost all the cases filed by him against the accused had filed private complaint with false allegations as a last resort. There are no allegations attracting the offences under Sections 427 and 447 I.P.C. and Section 3 of Schedule Castes and Schedule Tribes (POA) Act, 1989 and therefore, sought for quashing the proceedings against them. It is further submitted that the 2nd petitioner died about two months back and therefore, no orders are required in respect of 2nd petitioner.

Learned Public Prosecutor submits that there are specific allegations against the petitioners in the private complaint and the learned Magistrate has referred the matter to the police for investigation under Section 156(3) of Cr.P.C. and the police have registered a case against the accused for the alleged offences. The plea of alibi raised by the petitioners can be considered only during trial after producing sufficient evidence and therefore, the petitioners are not entitled for quash.

At the outset in the light of the arguments of the learned counsel for the petitioners and the learned Public Prosecutor, it is clear that there are civil disputes between the parties. No doubt the suits filed by the 3rd petitioner were decreed in her favour and the first appeal and the second appeal were dismissed. Therefore, there is enmity between the parties. The enmity is a double edged weapon. Aggrieved by the orders passed by the Civil Courts, the *de facto* complainant might have filed this complaint or really the accused might have trespassed and committed the offence is a question of fact. As a matter of fact the petitioners have taken a plea of alibi that they were not present at the time of alleged incident. It is a question of fact to be decided by the competent civil Court. The disputed questions of fact cannot be gone into in this criminal petition. The jurisdiction under Section 482 of Cr.P.C. of this Court is an extraordinary jurisdiction which can be entertained only in appropriate cases where there are no disputed questions of fact and law are present.

In view of the foregoing reasons, this is not a fit case to exercise the discretion to quash the proceedings as the complaint *prima facie* shows that there are allegations attracting the

provisions under Sections 427 and 447 IPC. Hence, there are no valid grounds to quash the proceedings in this matter. The petitioners are at liberty to prove their case before the trial Court by producing the evidence with regard to the plea of alibi. The proceedings of this Court show that there was an interim stay of arrest of petitioners in this crime, and there was also a direction to continue the investigation. Learned Public Prosecutor submits that five witnesses have been examined in this case, and investigation is in progress. Hence, the police are directed to proceed with the investigation by following the procedure contemplated under Section 41-A of Cr.P.C. in the light of the decision reported by the Apex Court in ***Arnesh Kumar v. State of Bihar***¹.

With the above observation, the Criminal Petition is dismissed. The interim stay granted on 12.07.2011 is vacated.

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

GUDISEVA SHYAM PRASAD,J

Date : 23.10.2017
ssp

¹ 2014 (8) SCALE 250