

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.492 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking to quash the proceedings in First Information Report No.22 of 2017 of Kurnool Taluq Police Station, Kurnool District.

2. The petitioner herein viz., A. Ravindra Vara Kumar, who is arraigned as accused, alleged to have committed the offences punishable under Sections 447, 506 read with 34 of Indian Penal Code 1860 (IPC) and Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2015.

3. Heard Sri Challa Siva Sankar, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh, and perused the material on record.

4(a). Learned counsel for the petitioner would submit that the *de facto* complainant, respondent No.2 herein, falsely implicated the petitioner due to dispute in regard to Ac.0.50 cents of land in Survey No.283/1, located in Panchalingala Village, Kurnool District situated in the outskirts of Kurnool Town. The learned counsel draws attention to the interim orders passed by this Court in W.P. Nos.40253 of 2014, 19933 of 2016 and 34940 of 2016 against the *de facto* complainant and his followers filed by the petitioner herein.

He would submit that on 05.01.2017, the petitioner lodged a complaint with the Station House Officer, Kurnool Taluq Police Station, Kurnool, and it was registered as First Information Report No.7 of 2017 on 06.01.2017 against one Gangadhar and his followers including the *de facto* complainant for the offences punishable under Sections 447, 427 and 506 read with 34 of IPC in respect of the incident that took place on 05.01.2017. He would also submit that when the *de facto* complainant threatened the petitioner's watchman and his brother and trespassed into the house plot with JCB during midnight on 08.01.2017, they also made a complaint against the *de facto* complainant and his followers on 09.01.2017 with the Station House Officer, Kurnool Taluq Police Station and the same is registered as FIR No.7 of 2017.

(b) Concerning the facts, the learned counsel for the petitioner would submit that the petitioner purchased plots bearing Nos.16, 17, 20, 21, 23, 24, 25, 26, 27 and 28 situated in Panchalingala Village, Kurnool District under registered sale deeds dated 20.08.2014 and 18.07.2016. The *de facto* complainant and his followers since kept on interfering with his peaceful possession, he filed O.S. No.318 of 2016 which is pending on the file of Principal Senior Civil Judge, Kurnool. It is also his submission that when the *de facto* complainant and his followers in collusion with the Endowment and Revenue officials, started interfering again, he filed the aforesaid three writ petitions. The learned counsel would submit that the petitioner made application

for sanction of power supply for housing in the said plots and when the electric officials started executing power supply work, the *de facto* complainant and his followers obstructed the officials and, therefore, the Additional Assistant Engineer, APSPDCL addressed a letter dated 06.10.2016, seeking police protection for execution of that work.

(c) The learned counsel would also further submit that the petitioner made a representation to the police higher officials on 26.08.2016, requesting to provide police protection and to take action against the persons who are trying to implicate him in false cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2015, showing the *de facto* complainant as accused No.2 in the said complaint. The electrical officials again addressed a letter dated 03.12.2016, for police protection and executed the work; when the order passed by this Court in W.P.No.34940 of 2016 was annexed to the said letter addressed to the police for police protection.

(d) He would further submit that the petitioner made representation on 05.01.2017, to the police higher officials that the *de facto* complainant and his followers are obstructing in constructing houses, though, he got permission from the Gram Panchayat of Panchalingala Village, for construction of house, vide sanction order No.10 of 2016, dated 25.10.2016, and requested to provide police protection for construction of house.

(e) The learned counsel would submit that on receipt of the said report, the Inspector of Police, Kurnool Taluq Police Station, called the petitioner over mobile phone and threatened him with dire consequences using un-parliamentary language and threatened that he would implicate him in SC and ST cases.

(f) The learned counsel would submit that the complaint lodged by the petitioner on 19.01.2017, refers to the incident dated 05.01.2017, and thus, the inordinate delay, without there being any explanation, would itself belie the incident referred to therein. He would draw the attention to one of the averments contained in the complaint to the effect that the *de facto* complainant requested the Station House Officer to give him back possession of Ac.0.50 cents of land taking it from the petitioner. Thus, according to the learned counsel for the petitioner, this particular averment is enough to show that the *de facto* complainant is not in possession of the property and deliberately to implicate the petitioner, lodged the complaint with all false allegations.

5. The case is at the crime stage. It is true, the interim orders passed by this Court in the aforesaid three (3) writ petitions have been filed and police protection was accorded as sought for by the petitioner. The dispute relates to Ac.0.50 cents of land which the *de facto* complainant is claiming. It is also true, in the complaint lodged by the *de facto* complainant, there is an averment to the extent that while requesting the police as to Ac.0.50 cents of land to take out

the land from the petitioner and hand it over to him; but, he refers to the incident that alleged to have taken place on 05.01.2017, though, he lodges the complaint on 19.01.2017, a complaint filed against him by the petitioner herein and against the followers of the *de facto* complainant.

6. But, the short question is whether the delay of fourteen (14) days in lodging the complaint and filing of civil suit by the petitioner against the *de facto* complainant and the interim orders passed by this court in the aforesaid three (3) writ petitions would lead to the abuse of process of law.

7. Since it is at crime stage, the allegations levelled in the complaint required to be looked into. The other probabilities sought to be derived at this stage as to the delay in lodging the complaint though favours the petitioner at this stage, still, the same is subject to the rider that the *de facto* complainant may explain the same at a later stage. The delay may give rise to a suspicious circumstance, which constitutes one of the factors to view the case of the *de facto* complainant with suspicion, but, it falls within the arena of appreciation of evidence, but, not at this stage to quash the FIR.

8. The other circumstances i.e., filing of complaint and registering FIR against the *de facto* complainant and the Additional Executive Engineer of Electricity Department seeking police protection, are to be examined during investigation when the

investigating officer collects evidences. At this stage, the complaint does contain abusive phrases said to have uttered by the petitioner taking the name of the caste of the *de facto* complainant.

9. Therefore, giving direction to the Investigating Officer to issue notice under Section 41-A of Cr.P.C. and to follow the procedure prescribed therein and also the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹ would be reasonable, with further direction that the Investigating Officer must give opportunity to the petitioner to place all the material before him and he shall examine the effect of the material that would be placed by the petitioner to arrive at an opinion at the conclusion of investigation.

10. With the above directions, the Criminal Petition is dismissed, at the admission stage itself.

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

A. SHANKAR NARAYANA, J

April 4, 2017.

PV

¹ (2014) 8 SCC 273