

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.11225 of 2010

ORDER:

This Criminal Petition is filed by the petitioners 1 to 5, who are accused in Crime No.317 of 2010 of Balanagar Police Station, Cyberabad, seeking to quash the said proceedings registered for the offences punishable under Sections 447 and 427 IPC basing on the report of 2nd respondent, dated 06.11.2010.

2) Heard learned counsel for the petitioners/ accused Nos.1 to 5 and learned public prosecutor representing the respondent—State.

3) A perusal of the contents of FIR shows that on 02.11.2010 during early hours, K.Udayananda Reddy, Managing Director of M/s.Sagar Electrical & General Industries now claiming Sagar Thermit Corporation Ltd., and others were trespassed into the area under the complainant's site i.e., plot Nos.B-67 and 68—A.P.Industrial Estate, Balanagar, by crossing the fencing which was erected long back and cut down the trees and cleared site of complainant.

4) The contents in the quash petition are that A.1—Sagar Infra Rail International Limited, rep. by its Managing Director A.2, among the 5 accused, A.3 is mentioned as supervisor, A.4 and 5 are workers of A.1, having registered the office at Plot No.B-67 of A.P.Industrial Estate, Balanagar,

which was established in April, 1984 for manufacturing of Alumino Thermit Portions and connected consumables to execute thermit Welding of Rails of Indian Railways as per the specifications. Due to increase in business activities, in March, 2000, the name of M/s.Sagar Electricals was changed as M/s.Sagar Thermit Corporation Ltd, (for short 'Sagar Thermit'). Due to change in the business activities and expansion of business in India and abroad, the name of Sagar Thermit was changed as M/s.Sagar Infra Rail International Ltd., and there was a long standing dispute in respect of plot Nos.B67 and B.68, between K.Suryanarayana—defacto complainant and Smt.D.Charumathi. Pursuant to the order passed by this Court in W.P. No.3928 of 1993 and W.P. No.20562 of 1996, the Andhra Pradesh Industrial Development Corporation Limited (APIIC) executed registered sale deed dated 12.03.2000 in favour of Sagar Electrical (represented by petitioner No.2/ accused No.2) conveying plot No.67 admeasuring 2718 Sq.yds and another sale deed dated 03.04.2000 conveying plot No.68 admeasuring 2705 Sq.yds in favour of Sagar Engineering Company, represented by 1st respondent. After execution of sale deeds, APIIC fixed the boundaries between plot Nos.67 and 68, the defacto complainant and his associates removed the boundary stones and encroached into the north-east corner of plot No.B67 and started making constructions.

5) Even before disposal of the above mentioned writ petitions, Sagar Engineering Company, rep. by respondent No.1 and one Smt.D.Charumathi filed O.S. No.341 of 1987 on the file of Principal Senior Civil Judge, Ranga Reddy District against the defendants i.e., 1)Sagar Electrical—A.1 rep. by A.2, 2) K.Udayananda Reddy—A2, 3)K.Sitarama Raju, 4)Dr.D.S.Raju, Sree Satyam Spinning and Weaving Mills Ltd., 5) Sagar Thermit Corporation rep. by its Manager A.2 to deliver vacant possession of plot No.67 and for payment of mesne profits. They also filed O.S. No.122 of 2000 to a) declare the proceedings dated 09.03.1993 in file No.ZO/J/APIIC/9/887 cancelling the agreement of sale dated 19.07.1985 as illegal, b) direct the defendants 1 and 2 to specifically perform the suit agreement of sale dated 09.07.1985 by executing the registered sale deed in favour of plaintiffs in respect of plot Nos.67 and 68 admeasuring 2718 Sq.yds and 2705 Sq.yds respectively, (b1) the relief of specific performance in respect of plot No.B68 admeasuring 2705 Sq.yds be omitted and 6th defendanat—M/s.Sagar Infra Rail International Ltd., may be directed to join as co-executants to the sale deed to be executed by defendants 1 and 2 in favour of the plaintiffs in respect of plot No.B67 admeasuring 2718 Sq.yds, c) declare the agreement of sale dated 20.03.1993 executed by the defendants corporation in favour of 4th defendant firm—M/s.Sagar Electricals as inoperative and not binding on them. They also sought for a declaration of sale

deed dated 10.03.2000 vide document No.891 of 2000 executed by defendants 1 to 3 Corporation in favour of 6th defendant—M/s.Sagar Infra Rail International Limited in respect of plot No.B67 admeasuring 2718 Sq.yds as inoperative, void and not binding on them. After disposal of writ petitions, claim in O.S. No.122 of 2000 was given up in respect of plot No.68. Sagar Electrical —A.1 filed O.S. No.816 of 2000 on the file of Principal Senior Civil Judge, Ranga Reddy District against Sagar Engineering Company rep. by defacto complainant and another to remove the construction and also for an injunction. Another suit was filed by Sagar Thermit in O.S. No.1060 of 2001 in the same Court against Sagar Engineering Company rep. by defacto complainant and two others for declaration of title in respect of 365 Sq.yds of land in the north east corner of plot No.67 and for delivery of vacant possession. The Court below has passed the common judgment in O.S. Nos.341 of 1987, 122 of 2000, 816 of 2000 and 1060 of 2001 dismissing the suit in O.S. No.341 of 1987 filed by Sagar Engineering Company represented by the 1st respondent and Smt.D.Charumathi, partly decreed the suit in O.S. No.122 of 2000 filed by Sagar Engineering Company represented by the 1st respondent and Smt.D.Charumathi only to the extent of relief regarding cancellation of the agreement of sale by rejecting the other reliefs. Aggrieved by the said common judgment, Sagar Engineering Company represented by 1st respondent and Smt.D.Charumathi

preferred appeals viz., A.S. Nos.729 and 733 of 2009 before this Court.

6) The Railway Board decided to implement up-gradation in existing manufacturing and testing facilities in the 1st petitioner premises and fixed targeted dates for installation of different machines/equipment by letter dated 05.09.2008 and it was informed to the manufactures in the meeting held on 29.05.2009. The 1st petitioner after obtaining required approvals from the APIIC vide proceedings dated 16.09.2009 started constructions/modification within the existing shed area as per the approved plan by spending an amount of Rs.1,50,00,000/-. Sagar Engineering Company represented by 1st respondent and Smt.D.Charumathi filed A.S.M.P. No.2269 of 2009 in A.S. No.729 of 2009 to restrain Sagar Electrical i.e., petitioner No.1 represented by petitioner No.2 from making construction in plot No.B67 but the Court did not incline to pass an order, but for by virtue of said construction no equities can be claimed in future but for at risk.

7) So far as O.S. No.160 of 2010 for recovery of 365 Sq.yds on the north-east corner of plot No.B67 is concerned, accused Nos.1 and 2 filed E.P. No.269 of 2010 on the file of Principal Senior Civil Judge, Ranga Reddy District and the same is pending.

8) Having failed in obtaining the orders in I.A. No.2195 of 2009 supra, pending A.S. No.728 of 2009, the defacto complainant has chosen to lodge a false report not only against accused Nos.1 and 2 but also the employees i.e., accused Nos.3 to 5 as if they have trespassed or committed mischief with vague averments and the proceedings are liable to be quashed and as it is purely a civil dispute, the same cannot be allowed to convert into criminal prosecution.

9) There is an interim stay of all further proceedings in Crime No.317 of 2010 of Balanagar Police Station, Cyberabad, passed by another bench of this Court on 10.11.2010. The defacto complainant—respondent No.1 filed vacate stay petition in Crl.P.M.P. No.18946 of 2016, filed by S.I of police, Balanagar, that four witnesses were examined and the investigation is in progress. In the meantime, accused approached this Court by filing a quash petition and obtained stay and for completing the investigation, stay is to be vacated.

10) No doubt, the facts basically show there is a civil dispute. In fact, as per the affidavit of vacate stay petition, S.I of Police already examined four witness and the investigation is in progress to file final report subject to vacating stay. The law is settled that a purely civil litigation cannot be allowed by converting into criminal prosecution. However, mere pendency of a civil litigation is not a ground to

quash the criminal proceeding, as each case shall be decided on its own facts.

11) Having regard to the above, since petitioners are under the protection of interim order, the Criminal Petition is disposed of by allowing the Crl.P.M.P. No.18946 of 2016 to vacate the interim stay granted on 10.11.2010 in Crl.P.M.P. No.10278 of 2010 in Crl.P. No.11225 of 2010, thereby investigation shall go on, enabling the police to complete and file final report, however, not to arrest the petitioners pending investigation and all the defences of the accused are left open.

12) Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:12.12.2017
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