

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.7953 OF 2013

ORDER:

This Criminal Petition, under section 482 of Cr.P.C., is filed by the Petitioners/A-1 to A-3 seeking to quash the proceedings in C.C. No.41 of 2011, on the file of the Court of Additional Judicial First Class Magistrate, Vizianagaram, registered for the offences punishable under sections 427, 430, 447, 379 and 506(2) of I.P.C.

2. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the 2nd respondent – State. None appears for the 1st respondent – *de-facto* complainant.

3. The complaint is filed stating that the petitioners had dug a channel in the land of complainant, which is in Survey No.178/1, and diverted the water from the land which resulted in loss to the complainant.

4. Learned counsel for the petitioners submits that the complainant has, initially, filed a suit in O.S. No.272 of 1996, before the Additional Junior Civil Judge, Vizianagaram, seeking permanent injunction restraining the defendants from interfering with the plaint schedule property, which stood dismissed for default on 15.09.2000, after framing issues. The complainant, without seeking for restoration of the suit, filed another suit in O.S. No.38 of 2007 before the Senior Civil Judge, Vizianagaram, and the learned Senior Civil Judge also dismissed the suit for default on 13.07.2011. However, during pendency of the suit in O.S. No.38 of 2007, the complainant herein along with another, filed an application in I.A. No.145 of 2007, under Order XL Rule 1 of C.P.C. for appointment of Receiver to take possession of the plaint schedule property, pending disposal of the Suit, but the same was dismissed by the learned Senior Civil Judge considering that no *prima-facie* case was made out in favour of the petitioners therein. It was further observed that the land was purchased by both the parties, evidently, from a common vendor. The order

also reflects that the Commissioner was appointed in the suit in O.S. No.38 of 2007 and he noticed that newly erected barbed wire fencing, with new cement poles was present on the newly formed bund, spreading soil and earth. The respondents' contention therein was that the property belongs to them and, hence, they erected the fencing; but the Court, by considering that there is a dispute regarding the suit property and the question as to claiming the excess land in the suit property is to be decided only in the suit, dismissed the Petition.

5. Hence, the intention of the complainant is evident from the two suits which are dismissed for default and which were not carried forward. In the complaint filed by the complainant, in the first instance, the Police filed final report referring it as false and mistake of fact. After the said final report, the Additional Judicial First Class Magistrate, issued notice to the complainant and thereafter recorded the sworn statement and found *prima-facie* case and hence took cognizance of the case. But, in view of the background facts, it can be said that it is purely a civil dispute and there is every possibility of the averments in the complaint being false.

6. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioners would result in sheer abuse of process of law.

7. Therefore, the Criminal Petition is allowed and all further proceedings in C.C. No.41 of 2011, on the file of the Court of Additional Judicial First Class Magistrate, Vizianagaram, against the petitioners, are hereby quashed.

8. As a sequel, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

T. RAJANI, J

Date: 24.09.2018.
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SMT JUSTICE T.RAJANI**137**

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