

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.6231 of 2008

ORDER:

Heard the learned counsel for the petitioners as well as the respondents.

The present petition is filed to quash the proceedings initiated in C.C.No.994 of 2008 on the file of the VI Metropolitan Magistrate at Medchal, Ranga Reddy District.

The facts of the case are that the 2nd respondent filed a private complaint under Section 200 Cr.P.C., against the petitioners on the file of the Court of the VI Metropolitan Magistrate at Medchal, Ranga Reddy District for the offence under Sections 147, 148, 447, 427, 327, 291, 424, 506, 461, 307 and 120 (b) read with 149 IPC. In the said complaint it is stated that he is the Supervisor appointed by one Khaja Naseeruddin and his family members to protect the land admeasuring Ac.204.22 guntas in Sy.Nos.285, 253 and 290 (old). The said land being an Inam land, the same was purchased from Khaja Jalal, who was the Makthedar. The property was known as Khaja Jalal Maktha. As per the revenue record, the above said property stood in the name of Khaja Jalal, who was the grandfather of Sri Khaja Naseeruddin (LW.2). It is also stated that the Revenue Divisional Officer, Chevella, Ranga Reddy District, granted Occupancy Right Certificate in favour of Khaja Naseeruddin and his family members vide case Nos.F1/1677/2004 and

F1/5839/2004 dated 24.01.2004. Aggrieved by the said orders, one Sri K. Sai Reddy and four others filed W.P.No.7093 of 2007 before this Court. However, the said writ petition was dismissed and W.A.No.540 of 2007 filed against the said order was also dismissed. Sri Khaja Naseeruddin and another filed a suit in O.S.No.705 of 2006 against accused No.1 and four others in respect of the land admeasuring Ac.28.1 guntas in Sy.No.285 (old), corresponding new Sy.Nos.367 and 368 situated at Kanajiguda, Alwal Village, Malkajgiri Mandal, on the file of the Court of the II Additional District Judge, Ranga Reddy District. Pending the said suit, an application in I.A.No.1970 of 2006 was filed for interim injunction. On 29.11.2006, interim injunction was granted restraining accused No.1 i.e., petitioner No.1 herein and other defendants from interfering with the peaceful possession and enjoyment of the subject land. The owners have raised the compound wall fixing the gate and name boards and appointed the 2nd respondent as Supervisor. On 08.12.2007, at about 1500 hours, all the petitioners along with their employees and gundas holding iron rods, sticks, knives, stones in their hands forcibly entered into the premises by breaking open the lock and damaged the gate board and motor cycle of the 2nd respondent and he was attacked and beaten with rods, sticks, hands and etc. The 2nd respondent received blunt injuries all over the body and on raising hue and cry, they left the place. He came to the

police station and reported the above attack, but the accused managed the police using their official power and political power since accused No.8 is a M.L.A. belonging to the ruling party. Though the 2nd respondent filed a written complaint, the police did not enter the same and directed him to approach the Court of law. However, the police kept the 2nd respondent in their custody without providing any treatment since 08.12.2007 and produced him before the Court on 10.12.2007 implicating him in a false case vide Crime No.463 of 2007 for the offence under Sections 447, 427 and 353 read with Section 34 IPC along with two others. After he was released on bail, he got admitted in Nirmala Nursing Home for treatment. All the accused while forcibly trespassing into the subject premises with an intention to grab the subject land, attacked the 2nd respondent and in the process violated the orders passed in I.A.No.1970 of 2006 in O.S.No.705 of 2006. Therefore, he requested the Court to refer the complaint to the police station, Alwal under Section 156(3) Cr.P.C., and the said complaint was referred to the police. Pursuant thereto, a crime in FIR.No.468 of 2007 was registered against the petitioners for the offence under Sections 147, 148, 447, 427, 327, 291, 424, 506, 461, 307 and 120(B) read with 34 IPC. On investigation, the police filed a final report under Section 173 Cr.P.C. on 13.12.2007 referring the case as a false one. Aggrieved by the same, the 2nd respondent filed a protest petition under Section 190(1) Cr.P.C. before the Court below.

The learned Magistrate, after perusal of the protest petition and also the sworn statements and the documents filed in support of the case, observed that the *prima facie* view of this Court is contrary to the conclusions arrived at in the final report and *prima facie* emerging before the Court that accused Nos.1 to 8 have committed acts and omissions and they are put to be tried as per law and that their acts fall beyond their official duty and the case is taken on file for the offences as mentioned above and summons were issued. Aggrieved by the same, the present petition is filed.

Learned counsel appearing for the petitioners would contend that the petitioners are falsely implicated in the offence and the present case is a counter blast to the crime registered vide FIR.No.463 of 2007. The petitioners are the employees of the Secunderabad Cantonment Board (hereinafter referred to as "the Board") and the subject land belongs to the Board. The subject land is acquired under acquisition proceedings from the then Nizam Government in the year 1937 for the purpose of dumping garbage and the same was used as dumping garbage till 2005 popularly known as Hasmathpet Trenching Ground. However, the dumping garbage has been stopped by the Board as per the orders of the A.P. Pollution Control Board. In the year 1995, after a joint survey, the subject land was demarcated and boundaries were fixed by the Mandal Revenue Officer, Malkajgiri, with the help of Assistant Director, Survey and

Land Records, Ranga Reddy District. The Board has constructed a compound wall by spending about Rs.35 lakhs and erected huge iron gates on two sides for movement of the vehicles and also constructed a servant quarter to look after the property and dug a bore well for the purpose of drawing water. Since 2005 as the subject land is vacant, the 2nd respondent attempted to encroach into the same. On a complaint, a crime vide FIR No.463 of 2007 was registered against the 2nd respondent and others for the offences mentioned supra. The employers of the 2nd respondent filed applications before the Revenue Divisional Officer, Chevella, claiming that they are the protected tenants and the said claim was allowed. On appeal, the Joint Collector, Ranga Reddy District, held that these lands do not belong to the employers of the 2nd respondent. Aggrieved by the said orders, W.P.No.7093 of 2007 was filed before this Court and the same was dismissed on 09.04.2007 holding that the community lands, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers, absolutely vest in the State free from all encumbrances and an inamdar much less any person can be registered as occupant of the said land. Aggrieved by the said order, an appeal in W.A.No.540 of 2007 was filed and the same was also dismissed on 02.07.2007. It is also contended by the learned counsel for the petitioners that though the alleged incident happened on 08.12.2007, the complaint was

filed only on 17.01.2008. This itself shows that it is a false case and the petitioners are implicated in the offence only to harass and pressurize them. He also brought to the notice of the Court about the acquisition of the said property and the proceedings relating to determination, payment of compensation and handing over of the subject property to the Board.

Per contra, the learned counsel for the respondents would submit that originally one Khaja Jalal was the Makthedar as per the Muntakhab in respect of the land admeasuring Ac.204.22 guntas in Sy.Nos.285, 253 and 290 (old) and it was popularly known as Khaja Jalal Maktha. As per the revenue records, such as, Bando Basth of 1329 Fasli and Khasra Pahani of 1954-55 of Alwal Village, the name of Khaja Jalal was shown as the owner. The said Khaja Jalal is the grandfather of LW.2, who is said to be one of the owners of the subject land. The Revenue Divisional Officer granted Occupancy Right Certificate in favour of Sri Khaja Naseeruddin and his family members on 24.01.2004. W.P.No.7093 of 2007 filed by Sri K. Sai Reddy and four others against the orders dated 24.02.2007 of the Joint Collector, Ranga Reddy District was dismissed and the writ appeal filed against the said order was also dismissed. Therefore, Sri Khaja Naseeruddin and his family members are the occupants and possessors of the subject property since decades.

In fact, counsel for the 2nd respondent specifically contended that on 08.12.2007 at about 1500 hours, the petitioners along with 50 employees and 20 to 25 rowdies and gundas break open the lock and damaged the gate board of the subject property and attacked the 2nd respondent with rods, sticks etc., and in the process, he was severely injured. However, though he lodged a complaint on the same day, the police kept him in their custody and on 10.12.2007 he was produced before the concerned Court implicating him in a false crime vide FIR.No.463 of 2007 for the offence under Sections 447, 427 and 353 read with Section 34 IPC. Therefore, he sought dismissal of the criminal petition since there is ample evidence *prima facie* establishing the offence committed by the petitioners.

Learned counsel for the petitioners relied on the judgment of the Supreme Court in **State of Haryana and others v. Bhajan Lal and others**¹ for the purpose of substantiating his contention that the present complaint is only a counter blast to the crime registered against the 2nd respondent and there are no *bona fides* on his part in lodging the complaint in question. The complaint was filed only with a mala fide intention to wreak vengeance against the petitioners. He also relied on the judgment of the Supreme Court in **Inder Mohan Coswami and another v. State of**

¹ 1992 Supp (1) SCC 335

Uttaranchal and others² to support his contention that continuation of the proceedings in question would amount to the abuse of process of the Court since the criminal prosecution should not be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. He also relied on the judgment of the Apex Court in Criminal Appeal Nos.1590-1591 of 2013 dated 01.10.2013 to say that unless the sanction as contemplated under Section 197 Cr.P.C. is obtained, cognizance of the offence against the petitioners cannot be taken by the Court below. For similar preposition, he also relied on the judgments of the Supreme Court in **D.T. Virupakshappa v. C. Subash**³, **Nanjappa v. State of Karnataka**⁴ and **Surinderjit Singh Mand and another v. State of Punjab and another**⁵.

Learned counsel also relied on the judgment of this Court in **S. Bala Krishna v. State of Telangana and others**⁶. Basing on the said judgment, he would submit that while taking cognizance, the Magistrate is bound to not only accept the facts referred in the protest application and the sworn statement of the protest petitioner and any other witness, but also bound to consider the earlier police referred report.

From the conspectus of the facts as stated supra, the facts which are not in dispute are that the subject land is

² (2007) 12 SCC 1

³ 2015 AIR SCW 2643

⁴ 2016 3 Crimes (SC) 125

⁵ 2016 Law Suit (SC) 653

⁶ 2016 Law Suit (Hyd) 57

being claimed by the employers of the 2nd respondent as well as the Board. As far as the material placed before this Court in the form of acquisition of Ac.32.72 guntas between Kanajiguda and Hasmathpet for trenching purpose through the Executive Officer, Secunderabad Cantonment, Secunderabad, taking charge of the land by the Cantonment Engineer at the site with reference to letter No.17610 dated 04.08.1937 for the purpose of handing over of the land and taking over of the land in question on 18.08.1937 from the Second Taluqdar, Bhagat District and entering the same in the cantonment immovable property register, the payment of compensation through a cheque for H.S.Rs.8003-13-0 for the subject land, which was already taken over by the cantonment authority for transmission to the Taluqdar, Bhagat District, Hyderabad, and the other material placed on record, would indicate that the subject land is owned by the Board.

That apart, the subject land being used as a garbage dump and the problem faced by the neighbouring colonies is also brought to the notice of this Court in the form of newspaper clippings, the orders passed by the A.P. Pollution Control Board directing the Board to stop the dumping of the garbage in the subject land, the photographs placed on record showing that the subject land has been surrounded by a compound wall with two gates for ingress and egress of the Board vehicles, erection of a room and obtaining of electricity

connection etc., would *prima facie* indicate that the subject land is in possession and occupation of the Board in the form of using it as a garbage dump.

However, it is also brought on record that the subject land was owned by one Sri Khaja Jalal, who is the grandfather of Khaja Ahmeduddin and Khaja Abdul Rahman, who are LWs.4 and 5, as per the revenue records and their names are mentioned as pattedars and inamdars and possessors and cultivators of the land. The Revenue Divisional Officer, Ranga Reddy District, in proceedings Nos.F1/1677/2004 and F1/5839/2004 dated 24.01.2004 granted Occupancy Right Certificates in favour of Khaja Ahmeduddin and Khaja Abdul Rahman and two other family members after conducting a thorough enquiry. The said proceedings were challenged by one Sri Sai Reddy and four others in W.P.No.7093 of 2007 before this Court and the same was dismissed on 09.04.2007. Aggrieved by the said order, W.A.No.540 of 2007 was filed, but after hearing, the said appeal was also dismissed by this Court on 02.07.2007. Therefore, it appears that there is a dispute with regard to the ownership and title over the subject land by the employers of the 2nd respondent and the Board. When the disputed questions of fact are existing with regard to the title and the ownership, more particularly, in the case on hand, it is brought on record that the Board is owning the subject land and the employers of the 2nd respondent are claiming in the

form of Occupancy Right Certificate, the said issue cannot be decided in a criminal proceeding. That apart, *prima facie* evidence is placed before this Court to show that the subject land is being used as a dumping yard by the Board. However, as far as taking cognizance of the offence against the petitioners is concerned, a perusal of the docket order, dated 21.08.2008 in C.C.No.94 of 2008 would indicate that the Court below, while taking cognizance of the offence, has not taken into consideration the final report filed by the concerned police, except stating that perused the protest petition and final report and the *prima facie* view of the Court is contrary to the conclusions arrived at in the final report. The final report dated 13.12.2007 filed by the concerned police reveals as under:

“Investigation reveals that the Cantonment Board of Secunderabad has purchased the land admeasuring 32 acres 29 guntas situated between Hasmathpet and Kanajiguda on 18.08.1937 for a total sale consideration of Rs.8003.13 from Nizam of HEH. The said land was taken by Talukadar, Bhagat District, Hyderabad Deccan for the purpose of trenching. Out of the said land 28 acres 29 guntas was kept by the Cantonment Board and the remaining 4 acres land has been handed over to Government for using trenching approach road etc.

Apart from that the cantonment board has acquired land admeasuring 17 guntas in Survey 285 by paying compensation of Rs.98.06 from HEH Nizam on 07.01.1941. The said land was used till the year 2005 for trenching purpose. In the same year the pollution board had approached the Hon'ble High Court against the cantonment board to stop dumping the debris in the said land on which the cantonment board had stopped dumping the debris vide writ petition 12509/2004 of the Hon'ble High Court of Judicature of Andhra Pradesh. After that Mandal Revenue Officer, Malkajgiri Mandal with the help of S & L R of R.R. District the said trenching land joint surveyed and demarcated vide letter B1/674/1995 dated 15.03.1995 and accordingly informed to the cantonment board and communicated the demarcated plan. Further, the cantonment board addressed a letter 934 dated 19.03.1998 to District Collector, R.R. District with a request to allot

survey number to the said land and to give ownership rights over the said land in revenue records and the cantonment board has shifted all the debris in the said trenching land to Jawahar Nagar, R.R. District. The cantonment board has constructed compound wall around the trenching land and also constructed a security room and protected their land from the land grabbers in order to not to enter into their land and they have also planted trees.

One Mohammed Hussain has filed a suit vide IS:16/1990 before the Hon'ble Court against the Executive Officer, Cantonment Board for obtaining injunction order but the Hon'ble Court has dismissed the injunction order vide IA 7/1990 in OS: 16/1990 and since then the said trenching land is under control of cantonment board.

On 08.12.2007 at about 1500 hours the complainant along with his associates i.e., T. Ashok, Patan Rasool and others illegally trespassed into the trenching land of cantonment board by informing the cantonment board watchman that they have been sent by one Salivahana Builders on which the cantonment board restrained them not to enter into the trenching land of cantonment board but the complainant and his henchmen beaten the cantonment board watchman with hands and further damaged the caution board, gate and locks of the cantonment board and after that they have tried to put another board. At the same time, the watchman informed the same to cantonment board officials i.e., Sri Ganga Rama Swamy, A Mahender and Lalluram Suresh. Immediately they came to the trenching land where they found out of five persons four persons have escaped and the complainant was caught hold and caused enquiries.

He disclosed that they have entered into the trenching land of cantonment board on the instructions of Salivahana builders and the complainant further disclosed that he is working with them as a supervisor.

The Executive Engineer of cantonment board has filed a complaint against the complainant and others on 08.12.2007 which was registered by S.I. of Police Smt. A.Lakshmi, PS, Alwal in Crime: 463/2007 under Section 447, 427, 353 r/w 34 IPC. On completion of investigation allegations made by the cantonment board were established against the complainant, T. Ashok, Patan Rasool, Anthony and Ravi. In the said case the complainant of this crime, T.Sahok and Patan Rasool were arrested and produced before the Hon'ble Court and rest of two persons were shown as absconding."

In the light of the above, the Court below has not at all considered the final report filed after a full-fledged enquiry. Even on this ground also the proceedings initiated against the petitioners are liable to be quashed. Therefore, this Court

feels that no *prima facie* case is made out against the petitioners and further continuation of the proceedings against them would amount to abuse of process of the Court, as such, the proceedings are liable to be quashed.

Accordingly, the criminal petition is allowed quashing the proceedings initiated against the petitioners in C.C. No.994 of 2008 for the offence under Sections 147, 148, 447, 427, 327, 291, 424, 506, 461, 323 and 120 (B) read with 149 IPC on the file of the Court of the VI Metropolitan Magistrate at Mechal, Ranga Reddy District. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

Date: .04.2018.
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P. KESHA RAO, J

