

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.1184 of 2018

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioners/accused Nos.1, 3, 8, 9 & 12, seeking to quash the proceedings in Crime No.173 of 2017 on the file of the Vuyyuru Town Police Station, Vijayawada City, registered for the offences under Section 379 of I.P.C. and Section 3 of the Prevention of Damage to Public Property Act, 1984 (for short, 'PDPP Act').

2. Heard the learned counsel for the petitioners/accused Nos.1, 3, 8, 9 & 12, learned Assistant Public Prosecutor representing the 1<sup>st</sup> respondent-State and perused the record.

3. The learned counsel for the petitioners/accused Nos.1, 3, 8, 9 & 12 would submit that taking away the ordinary earth would not constitute offence under Section 379 of I.P.C. There are no ingredients in the complaint lodged, constituting offences under Section 379 of I.P.C. and Section 3 of the PDPP Act. The allegations do not constitute any offence mentioned in the report lodged with the police and to proceed with the investigation. The petitioners/accused Nos.1, 3, 8, 9 & 12 are innocent persons and they are not responsible for the alleged offences and ultimately prayed to allow the application.

4. The learned Assistant Public Prosecutor opposed any relief in favour of the petitioners/accused Nos.1, 3, 8, 9 & 12.

5. The material on record reveals that on enquiry conducted by the de-facto complainant – Tahsildar, Vuyyuru Mandal, Krishna District, it came to his notice that ordinary earth was removed from National Highway No.9 Road cuttings (VUP work) at Katuru Road, Vuyyuru. When he enquired into the matter, he found that the petitioners/accused Nos.1, 3, 8, 9 & 12 and other persons have indulged in commission of theft of the mud from National Highway No.9 road cutting. Therefore, he lodged a report with the police and the crime is under investigation.

6. As per the material placed before this Court, there are altogether 12 persons who indulged in the commission of theft of the ordinary mud totaling 2530.57 cubic metres. Commission of theft of mud belonging to the Government, without requisite permission, definitely constitutes offence under Section 379 of I.P.C. There are also other allegations against the petitioners/accused Nos.1, 3, 8, 9 & 12 in the First Information Report lodged with the police with regard to committing mischief under Section 3 of the PDPP Act, i.e., damaging National Highway No.9. There is no permission to the petitioners to cut the road and take away ordinary mud. The statement of Manager, DILIP Constructions is not useful to the petitioners. The total cost of damage and loss is Rs.2,69,800/-. The truth or otherwise of the allegations made in the First Information Report, dated 27.12.2017, can only be determined in the course of enquiry, if required, by a full-fledged trial by a competent criminal Court. In view of the facts and circumstances of the case, it cannot be said that there are no grounds to issue First Information Report for the

offences under Section 379 of I.P.C. and Section 3 of the Prevention of Damage to Public Property, 1984. Continuation of investigation will not amount to abuse of process of law. The allegations are grave. Under these circumstances, it is not a fit case to allow this application.

7. Hence, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand dismissed.

8. When this order is dictated in the open Court, learned counsel for the petitioners/accused Nos.1, 3, 8, 9 & 12 made certain unwarranted gestures and remarks. It is deprecate. This Court is contemplating to take action under Contempt of Courts Act, 1971, for doing so.

Dr. Shameem Akther, J

05<sup>th</sup> February, 2018  
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