

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**Crl.P.No.2464 of 2011**

**ORDER**

This criminal petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in C.C.No.163 of 2010 on the file of II Additional Judicial First Class Magistrate, Khammam.

2. The petitioners are accused in Crime No.268 of 2009 on the file of Khammam Rural Police Station, Khammam District and subsequently after filing the charge sheet, the same was registered as C.C.No.163 of 2010 on the file of II Additional Judicial First Class Magistrate, Khammam.

3. The version of the prosecution, as per the charge sheet filed against the petitioners herein, is that the de-facto complainant, Korlakunta Nagesh, is a resident of Polepalli Village, Khammam Rural Mandal. He is eking out his livelihood by doing agriculture. He has got Ac.10.00 of agricultural land in Sy.Nos.155 and 156 at Polepalli Village. A1 is a retired Deputy Executive Engineer in Panchayatraj Department and resident of Krishna Nagar, Khammam. A2 and A3 are residents of Polepalli Village, Khammam, and working under A1 as Coolies. Out of Ac.10.00 of land, the de-facto complainant sold away Ac.7.00 of land to A1, about seven years back, through his uncle Korlakunta Srinivasa Rao (LW6) through a registered sale deed in favour of A1. About three years back, the de-facto complainant planted lemon garden in the rest of Ac.3.00 of land. He appointed a Watchman, Dodla Veera Bhadram, to watch the garden. Recently, A1 has raised a dispute that there is

a difference regarding land mark between the land of the de-facto complainant and his land. In that regard, they approached the elders, Chunduri Muthaiah and Korlakunta Srinivasa Rao (L.Ws.5 and 6), who stated that they would settle the matter within ten days. Keeping in view the land dispute, on the intervening night of 23/24.06.2009, A1, with the assistance of A2 and A3, reached the lemon garden of the de-facto complainant in Sy.Nos.155 and 156 at Polepalli Village, with axes with an intention to cause damage to the de-facto complainant, criminally trespassed into the land of the de-facto complainant and cut down 100 lemon trees, burnt them and caused damage to a tune of Rs.50,000/-. Therefore, A1 to A3 have committed the offences punishable under Sections 447, 427 read with Section 34 IPC.

Basing on these allegations in the charge sheet, the case was taken on file by the learned Magistrate and the same was registered as C.C.No.163 of 2010. Aggrieved by the proceedings in the said C.C., this criminal petition has been filed by the petitioners/A1 to A3.

4. This Court, vide order dated 18.03.2011, stayed all further proceedings in C.C.No.163 of 2010.

5. Learned counsel for the petitioners mainly submitted that there are absolutely no allegations against the petitioners to rope them in the commission of the offences and none of the witnesses have seen the incident of accused committing the said offences. He further submitted that the complaint was registered and the charge sheet was filed by the police based on suspicion that due to rivalry between the parties, the accused might have committed the

offences. He placed reliance on the judgment of the Apex Court in **Harishchandra Prasad Mani V. State of Jharkhand**<sup>1</sup> referring to paragraph Nos.12 and 13, which read as under:

“It is well-settled by a series of decisions of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused.

In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.

Learned counsel for the petitioners placed reliance on the above decision and submitted that in the present case, there is absolutely no material against the accused, except the suspicion expressed in the FIR and also the suspicion expressed by the Investigating Officer in the charge sheet that due to differences between the petitioners and respondent No.2/de-facto complainant, the case was registered. He further submitted that there are no eyewitnesses, who have seen A1 to A3 committing the offences under Sections 447, 427 read with Section 34 IPC, in this case

6. Learned counsel for the petitioners also placed reliance on the judgment of the Apex Court in **Narasappa V State of Karnataka**<sup>2</sup> referring to paragraph No.3, wherein it was held as under:

“In the present case, it appears that the only evidence against the appellant is that of P.W.2 (Govinda Nayaka), who is nobody else than the

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<sup>1</sup> 2007(15) SCC 494

<sup>2</sup> (2007) 10 SCC 770

son of the deceased. This witness is not an eyewitness. He stated in his evidence that since his father did not return home, he along with P.W.1 (Roopla Nayaka) and P.W.3 (Chandra Nayaka) rushed towards the temple with a torchlight and on the road near the temple they saw the cycle, can, lungi and muffler of his father lying on the floor. He further stated that the witnesses heard the sound of movement of some people near the temple and saw that the accused persons were dragging his father in the land of one Muniyappa. These witnesses screamed and reached towards the accused persons whereupon they left the deceased Krishna Nayaka on the ground and fled away. This shows that the accused persons were carrying the dead body. This may at the highest raise strong suspicion against the appellant to show his complicity with the crime, but the suspicion, howsoever strong it may be, cannot take the place of proof. In the absence of any other evidence to connect the appellant with the crime, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding conviction of the appellant”.

Learned counsel for the petitioners further submitted that the suspicion, however, strong, it cannot take the place of proof. In the above decision, the accused was found not guilty and acquitted as there was no evidence against him in connecting with the crime and mere suspicion does not take the place of proof and therefore, he was acquitted.

7. Learned counsel for the petitioners also placed reliance on the judgment of the Apex Court in **Swinder Singh V State of Punjab**<sup>3</sup> referring to paragraph No.8, which reads as under:

“It is no doubt true as we have pointed out earlier that there is a strong suspicion against the appellant, but as pointed out by this Court in Pabitar Singh V. State of Bihar (1972) 3 SCC 354 although there may be grave suspicion against an accused person, still the prosecution is bound to establish facts from which the Court can reasonably arrived at a conclusion that the offence was committed by the accused. It may be

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<sup>3</sup> 1992 Supp(2) SCC 210

recalled that this Court repeatedly observed that the suspicion however grave cannot take the place of legal proof”.

8. Learned Public Prosecutor submitted that the charge sheet has been filed on the suspicion that the accused might have committed the offences.

9. Having regard to the facts and circumstances of the case and in the light of the above decisions and perusal of the FIR and the charge sheet, it clearly reveals that the charge sheet was filed before the learned Magistrate without there being any direct evidence and only based on the strong suspicion that the accused might have committed the offences. Therefore, it is sheer abuse of process of law.

10. In the light of the above decisions and the facts and circumstances of the case, no case is made out against the petitioners/A1 to A3. Therefore, the petitioners/A1 to A3 are entitled for quashing the proceedings.

11. In the result, the Criminal Petition is allowed, quashing the proceedings in C.C.No.163 of 2010 on the file of II Additional Judicial First Class Magistrate, Khammam, against the petitioners/A1 to A3.

12. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

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**GUDISEVA SHYAM PRASAD, J**

9<sup>th</sup> April, 2018  
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