

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.1947 and 1978 of 2012 and
5303 of 2013

COMMON ORDER:

The criminal petitions are filed for quash of the proceedings against the petitioners, who are A2 and A3, A1 and A4 respectively, in PRC.No.62 of 2011 on the file of the Special Court for trial of Cases under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act cum Additional District and Sessions Judge, Vizianagaram. The offences alleged are under Sections 4 and 8(b) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act').

2. Heard the counsel for the petitioners, the counsel for the second respondent and the learned Public Prosecutor, appearing for the first respondent.

3. The complaint is filed by the *de facto* complainant stating that he is the owner of 53 cents of land in Survey No.58 in Thotapalem village and that the other lands were also given to backward class people of their village. On 29.05.2011 at 8.30 AM, A2 obstructed the complainant and their men and other assignees and clandestinely entered into the land assigned to the complainant and obstructed them from ploughing and got arrested the driver of the tractor and also seized the tractor and also got arrested a person by name Attada Shankar who was not connected with the dispute. There was another person by name Dabarika Shankar Rao and in spite of the protest made by the complainant and other assignees, he abused the

complainant and others in their caste name. Then they gave a report to the Station House Officer (A4) I Town Police Station, Vizianagaram and far from registering a case against the accused, A4 joined hands with A1 to A3.

4. These being the allegations in the complaint, the complainant in his sworn statement slightly improves his version and states that when he went to the police station and reported the matter to the SI of Police, who tore the report given by them and asked them to do whatever they like. The offences alleged are under Sections 4 and 8(b) of the Act.

5. A perusal of the complaint shows that the allegations with regard to the said offences are only against the Tahsildar, Vizianagaram, who is shown as A2 in this case. Hence, on the face of the complaint, no case is found against other accused with regard to the alleged offences. Hence, there need not be any hesitation in quashing the proceedings against the other accused, A1, A3 and A4, who are the petitioners respectively.

6. With regard to the allegations against A2, the counsel for the petitioners submits that a report was given by the Tahsildar alleging trespass against the complainant herein and based on the said report, a case was registered for the offence under Sections 447, 427 read with Section 34 IPC.

7. The report is to the effect that the disputed land was taken over and was allotted to landless poor for agricultural purpose in the year 1980. Since the allottees failed to bring the land under cultivation, the

above land was resumed to the Government and the original allottees filed WP.No.25832 of 2007 and a status quo order was issued. Thereafter, the said writ petition was dismissed on 18.04.2011. The MRI informed him that a person was ploughing the land with a tractor at about 7 AM on 29.05.2011 and when asked, the said person revealed his name as Nakkella Sankara Rao and that he is working as a tractor driver with the owner of the tractor i.e. Botcha Paparao.

8. The counsel for the petitioners submits that the report of the Tahsildar would show that the present complainant was not present at the spot and no allegation was made against the complainant in the said report. Hence, the question of A2 abusing the complainant herein does not arise.

9. The counsel for the second respondent – complainant submits that the complainant was, in fact, present on the spot and that the complaint discloses the same.

10. A perusal of the complaint would show that it is mentioned in the complaint that the complainant was present on the spot. His sworn statement also shows that he was present when the incident occurred. Hence, unless the enquiry is conducted into the said aspect the truth cannot come to light. There are several disputes between the parties with regard to the land. The accused, after dismissal of the writ petition, in which status quo was granted in favour of the complainant, preferred an appeal but there was no stay granted in the appeal. The complainant filed WP.No.10939 of 2011 and stay was granted.

11. The counsel for the respondent, on the basis of the said fact, submits that the complainant was in possession of the property. But the order in WP.No.25832 of 2007 shows that the land was resumed by the Government.

12. Be that as it may, the issue of possession was being agitated by the parties and there is no conclusive finding given by the Courts with regard to possession, as a writ appeal is pending against the order in the above writ petition. Hence, it cannot be said that merely based on the possession that the alleged offence could not have happened. Hence, in view of the above, this Court opines that the proceedings so far A2 are concerned cannot be quashed.

In the light of the above, the criminal petitions is allowed in part and the proceedings against the petitioners, who are A1, A3 and A4 respectively, in PRC.No.62 of 2011 on the file of the Special Court for trial of Cases under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act cum Additional District and Sessions Judge, Vizianagaram, are hereby quashed and the criminal petition stands dismissed so far as A2 is concerned. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

T. RAJANI, J

November 13, 2018
DSK