HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.29902 of 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Home for respondents 1 to 5 and perused the prayer in the writ petition with the supporting affidavit and the counter affidavit of respondent Nos.1 to 5 and reply affidavit of the petitioner and other material on record.

It is the supporting affidavit averments vis-à-vis reply affidavit averments of the learned counsel for the writ petitioner that the civil dispute of O.S.No.62 of 2012 culminated by merger of appeal decree in A.S.No.24 of 2016 executed by EP.No.33 of 2017 for the relief of permanent injunction under Order 21 Rule 32 CPC from the trespass into the property by the unofficial respondent Nos.6 & 7 allegedly into the land on 07.08.2017 despite permanent injunction decree and caused damage to the property that is cotton crop worth about Rs.50,000/-. The writ petitioner stated approached the police, however, they did not receive the complaint dated 08.08.2017, which made to send by registered post and as per the 5th respondent, the complaint by registered post was received only on 08.09.2017 and GD entry made immediately in relation thereto, but the crime was not yet registered in saying by the 5th respondent and as can be seen from the original GD entry and it shows as if from the very counter affidavit the SHO-5th respondent to verify the complaint called the complainant to the police station on 09.09.2017 and it was informed by the complainant that the matter was settled with respondent Nos.6 & 7 through elders on 11.08.2017 and he was going to withdraw the

complaint and thereby, the statement of him was recorded before the VRO in closing the same.

As the said contention appears highly improbable, the Court called for GD entry and part-I case diary. According to him, there is no part-I CD for no crime registered and GD entry produced referred supra undisputedly makes out prima facie a cognizable offence. Once such is the case, it is the duty of the police to register the crime and before registration of the crime there is no necessity to call for the complainant much less to close the GD entry without registration of FIR. There is a mistake committed by the 5th respondent thereby.

It is the say of the writ petitioner, who is the defacto complainant therein, that he never withdrawn the complaint and it is a stage managed one to help the unofficial respondent Nos.6 & 7 by the official respondent. It is the reply affidavit of the writ petitioner to that effect by denying the averments of the counter affidavit of the respondents. Even once the crime is registered the part-I CD must be opened and report of the FIR with investigation progress if any to be send to the learned Magistrate as contemplated by Section 157 CrPC in use of the word reports from time to time till final investigation and filing of final report as contemplated by Section 173 CrPC. Once such is the case, there is no justification on the part of the 5th respondent in closing the GD entry without registration of the crime, without maintaining part-I CD and without submitting any report to the learned Magistrate as contemplated by Section 157(1) CrPC much less final report as contemplated by Section 173 (1) to (5) CrPC.

Having regard to the above, this Writ Petition is allowed and the closure of the GD entry by the 5th respondent from the alleged withdrawal of complaint by the complainant is set aside with a direction to the 5th respondent to register a crime and investigate the case and file final report within six (6) months from the date of receipt of this order and intimate the progress of the final report to the defacto complainant.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.05.2018
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