

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2220 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/accused seek to quash the proceedings against them in C.C.No.371 of 2010 on the file of Additional Judicial Magistrate of First Class, Tadepalligudem.

2) The factual matrix of the case is thus:

a) The 2nd respondent/complainant filed a private complaint for the offences under Sections 323, 427, 447 and 506(2) IPC against the petitioners/accused stating that he owns an extent of Ac.9-80 cents in R.S.Nos.109, 116, 117 of Ardavaram village, wherein he was rearing fish by digging fish tanks and he laid road upto his tanks by spending huge amounts and also placed 12 inches pipes underneath the road for passage of water to the tanks. Though A.1 had got direct passage way to his lands but he tried to use the said passage to reach his lands. When complainant objected A.1 on 20.11.2006, he threatened the complainant with dire consequences. Further, on 22.11.2006 at about 6 AM, all the accused dug up the passage and removed the 12 inches pipes laid underneath it and also opened the dummy of the fish seed culture pond and let the water to drain out and when the complainant on information rushed to the spot and tried to stop the accused, they pushed and kicked him and threatened to kill him with crowbar. Having no other option, the complainant gave a

complaint to the police on 22.11.2006. Since the police did not take any action against the accused, he filed the private complaint.

b) The learned Additional Judicial Magistrate of First Class, Tadepalligudem, took cognizance of the complaint and registered it as C.C.No.371 of 2010 for the offences under Sections 323, 427, 447 and 506(2) IPC.

Aggrieved, the petitioners filed the instant quash petition.

3) Heard arguments of Sri Nazir Ahmed Khan, learned counsel for petitioners; learned Addl. Public Prosecutor for the State (AP) and Sri Nimmagadda Satyanarayana, learned counsel for respondent No.2.

4) Learned counsel for petitioners opposed the criminal proceedings firstly on the submission that there are civil disputes between parties pending in Civil Court and having not succeeded therein, the petitioner filed a false complaint against the petitioners. In expatiation, he would submit, the 2nd respondent/complainant filed O.S.No.86/2010 on the file of Principal Junior Civil Judge, Tadepalligudem, against 1st petitioner and another for mandatory injunction and other reliefs and 1st petitioner is contesting the said suit by filing written statement. The 2nd respondent/complainant earlier filed O.S.No.532/2005 and in the said suit when Advocate Commissioner was appointed, who inspected the suit property on 03.12.2006 and filed his report wherein the Commissioner rightly pointed out that he did not find any obstruction in the suit locality i.e, scheduled pathway towards respondent's tank. In view of the aforesaid

report, the 2nd respondent/complainant came up with an innovated story in the present complaint which is an imaginary one to prejudice the mind of the Court.

a) Nextly, it is argued that 1st petitioner lodged complaint with Police of Ghanapavaram PS, Tadepalligudem which was registered as Crime No.69/2003 against 2nd respondent/complainant for the offences under Sections 324 and 506(2) IPC. The police filed charge sheet and the learned I Additional Judicial First Class Magistrate, Tadepalligudem, was pleased to convict the 2nd respondent in his judgment dated 22.11.2010. Thus 2nd respondent is a habitual offender. Petitioners 3 and 4 are the witnesses in the said case. Petitioners 5 and 6 are agriculturists and their lands are situated in the vicinity. The present complaint is filed in retaliation to the conviction suffered by him in Crime No.69/2003. It is further argued that the property involved in civil suits—O.S.No.532/2005 and O.S.No.86/2010 and the present complaint is one and the same. The petitioners have not committed any offence as alleged. He thus prayed to allow the petition.

5) Opposing the petition, learned counsel for 2nd respondent/complainant would argue that the complaint is not a motivated one inasmuch as all the petitioners have dug up the private passage of the complainant which was laid by him to serve as an approach road to his fish tanks and they also removed 12 inches pipes laid underneath the passage and also drained the water in the tanks and when the complainant on information went there, they kicked and pushed him and threatened to

kill him with crowbar. Due to their acts, the complainant suffered loss of more than Rs.1,00,000/- and as the police had not taken any action, he filed the private complaint and upon enquiry, the Court took cognizance. He submitted that civil suit is still pending and the property dispute has nothing to do with the mischief committed by the petitioners in respect of his private passage pipeline and fish tank, besides attacking the complainant. He thus prayed to dismiss the petition.

6) I gave my anxious consideration to the complaint allegations and the above arguments. It appears that there are disputes on several issues between 2nd respondent/complainant and 1st petitioner/Accused No.1. The 1st petitioner lodged report against the 1st respondent/complainant in Ghanapavaram Police Station which was registered as Crime No.69/2003 for the offences under Sections 324 and 506(2) IPC. In the said complaint it was alleged that there was boundary dispute between the complainant and the accused and on 16.08.2003, when LW.1 engaged coolies for working on the boundary bund, the accused attacked LW.1 with a sickle and hacked him on the right leg. The I Additional Judicial Magistrate of First Class, Tadepalligudem, after trial convicted the 2nd respondent/complainant in the said case. Besides, there are civil cases also. The 2nd respondent/complainant filed O.S.No.532/2005 against the 1st petitioner on the file of Principal Junior Civil Judge, Tadepalligudem, where a Commissioner was appointed, who ofcourse reported that there was no obstruction in the suit locality i.e, scheduled pathway towards 2nd respondent/complainant's tank.

a) The 2nd respondent/complainant and others also filed O.S.No.86/2010 against 1st petitioner and others, wherein it is pleaded that plaint 'A' schedule is the plaintiffs property and plaint 'B' schedule is the defendants property and plaint 'C' schedule is 'bodi' and both the plaintiffs and defendants are having right to let the sullage water through plaint 'C' schedule 'bodi'. However, the defendants caused obstruction to the said 'bodi'. Hence the suit for Mandatory Injunction for removal of the encroachment.

b) Thus the above are the criminal and civil cases, wherein the 2nd respondent/complainant and 1st petitioner/A.1 are parties. It is the contention of the petitioners herein that in view of the previous disputes, a false complaint is filed to wreak vengeance. However, the contention of 2nd respondent/complainant is that the petitioners have trespassed into his private passage and dug the same and also dug the 12 inches pipeline and let out the water from the tank and thus committed mischief and caused loss to him to the tune of Rs.1,00,000/-. Besides, they caused him injuries and threatened him with dire consequences. The Trial Court has taken cognizance after full-fledged enquiry. Therefore, at this juncture, it is not possible to determine whether the complaint is an outcome of the previous civil and criminal disputes or due to the mischievous and highhanded acts of the petitioners/accused. The complaint allegations show a *prima facie* case against the petitioners at this juncture. Therefore, I am not inclined to quash the proceedings against the petitioners.

7) Accordingly, this Criminal Petition is dismissed, however, with a liberty to the petitioners to file a discharge application before the Trial Court if they are so advised, in which case, the Trial Court shall pass an order on merits uninfluenced by the observations made in this order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.10.2018

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