

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.6135 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/accused seeks to quash the proceedings in S.C.No.60 of 2017 on the file of Special Sessions Judge for Trial of Cases under SC & ST (POA) Act-cum-XI Additional District and Sessions Judge, Visakhapatnam.

2a) The charge sheet allegations are that *defacto* complainant belongs to SC (Dandasi Caste) and retired as Deputy Chief Engineer, Port Trust, Visakhapatnam; he is having pent house—I, admeasuring 1750 sq.ft. in 5th Floor, Jyothi Residency, Dasapalla Hills, Visakhapatnam which was gifted to him by his nephews under registered document No.1384/13, dated 15.11.2012 and he was paying taxes regularly to the Municipal Corporation, Visakhapatnam; while so, accused purchased flat in 4th floor in the same Residency under a registered sale deed No.594/98 dated 31.12.1997 in the name of M/s.Prasad Housing and executed a lease deed dated 25.03.1998 on his name as lessor and lessee and thereafter he rectified the said lease deed vide rectification deed dated 25.02.2012 stating that his flat was a duplex flat in the 4th floor and pent house-I in the 5th floor which belongs to *defacto* complainant, by giving false information to the registration authorities; accused filed O.S.No.402 of 2010 against the complainant and his two nephews before the Principal Senior Civil Judge, Visakhapatnam which was dismissed with costs on 28.08.2014; the accused filed a false complaint before Tahsildar and Mandal Executive

Magistrate, Visakhapatnam in MG No.3010 and he also filed a petition TOP No.1258 of 2014 before the Principal District Judge, Visakhapatnam against the complainant and others which was dismissed. Now, the accused tried to occupy the pent house-I of the complainant illegally and forcibly. Hence, the complaint.

b) Basing on the said complaint, the police of III Town PS, Visakhapatnam registered a case in Cr.No.40 of 2016 under Section 3(1)(v) and 3(1)(vii) of SC & ST (POA) Act, 1989 and after investigation filed charge sheet. The learned Special Sessions Judge for Trial of Cases under SC & ST (POA) Act-cum-XI Additional District and Sessions Judge, Visakhapatnam took cognizance of the case and numbered as S.C.No.60 of 2017.

Hence, the present quash petition at the instance of accused.

3) Heard arguments of Sri T.Niranjan Reddy, learned counsel appearing for Sri Challa Gunaranjan, learned counsel for petitioner, Sri Nageswara Rao Pappu, learned counsel for 2nd respondent and learned Additional Public Prosecutor for the State (Andhra Pradesh).

4) Learned counsel for petitioner made an extensive argument in his endeavour to submit that due to the previous civil litigations between the accused and *defacto* complainant, a false case is foisted to wreak-vengeance against the petitioner and the previous litigation between the parties was a civil dispute relating to the property and therefore, the

criminal proceedings are not maintainable which amounts to abuse of process of the Court. He thus sought for quashment of the proceedings.

5) This Court having given anxious consideration to the submission of the petitioner, is of the opinion that the petitioner can approach the Trial Court and seek for his discharge. Therefore, without expressing any opinion on the merits of the case, this Criminal Petition is disposed of giving liberty to the petitioner/accused to approach the Trial Court and seek for his discharge raising all the pleas that are permissible to him under law, in which case, the Trial Court shall pass an order on merits expeditiously. Having regard to the submission made by learned counsel for petitioner, the attendance of the petitioner/accused before the Trial Court is dispensed with, except on the occasions when the Trial Court requires his attendance.

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

Date: 12.12.2018
Murthy/scs

U.DURGA PRASAD RAO, J