

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6587 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings C.C.No.22 of 2018, pending on the file of Principal Junior Civil Judge-cum-Land Grabbing Court at Visakhapatnam, registered for the offences punishable under Sections 447, 427, 120(b) read with 34 IPC and Sections 3 and 4 of the Andhra Pradesh Land Grabbing Act.

The Tahsildar, Visakhapatnam Rural Mandal – the 3rd respondent lodged report with the police making serious allegations against the petitioner/A2 and others that the land in Survey No.184/4 of Paradesipalem is Government Land and the accused trespassed into the land by doing criminal act. Based on the complaint, the police Paradesipalem, registered Crime No. 634 of 2015 and issued FIR.

During investigation, the Sub-inspector of Police recorded the statements of Lalam Sudhakar Naidu, Tahsildar of Visakhapatnam Rural, Manikyam Suryanarayana, Sambarika Appala Raju, Matti Ramesh, Veeragattapu Rama Rao, Pasagadugula Krishna Murthy, Singapalli Padma and Sambarika Bangarraju under Section 161(3) Cr.P.C., having concluded that there is sufficient material to proceed against the petitioner and others for various offences and filed charge sheet before the concerned Court. The Court took the cognizance of offence for various offences and issued summons to the petitioner and others.

The present petition is filed by A2 to quash the proceedings on the ground that the petitioner is in enjoyment of the property and that the land in Survey No.184/4 of Paradesipalem does not belong to the Government and the 2nd respondent only to harass the petitioner and Achanta Bharani Kumar lodged false report with the police and got investigated and filed

charge sheet. It is further contended that the police in collusion with the 2nd respondent filed charge sheet against the petitioner and others and what all the police collected the material, is only one document i.e. pahani which has been filed along with the charge sheet. A bare perusal of the pahani that it is not a certified copy, as such it cannot be looked into, cannot be taken into consideration and it is not shown to which year it relates to. It is further contended that the petitioner is in possession of the land in Survey No.184/4. Even the address of the pahani does not disclose that the Government is owner of the property. It is also further contended that in fact, Achanta Bharani Kumar is the owner and possessor of dry land to an extent of Ac.3.96 cents and Ac.0.97 cents, totaling to Ac.04.93 cents in Survey Nos.185/3 and 186/1 of Paradesipalem, Visakhapatnam Rural Mandal. As the 3rd respondent is interfering in agricultural land, he filed W.P.No.23900 of 2015 along with W.P.M.P.No.31105 of 2015 resisting his interference and this Court passed an order of status quo existing as on that day i.e. 24.08.2015 and inspite of the said orders, the 3rd respondent disputing the identity and boundaries of the land and thereby consequently interfering in his agricultural operations.

The petitioner further contended that the land in Survey No.184/4 is patta land belonging to one Veluru Jogulakshmi and to prove that the petitioner applied to the third respondent on 24.03.2018 for the land particulars of Survey No.184/4. In the pahani of 1420 Fasli, it was mentioned that notice was issued to Veluru Jogulakshmi and it discloses that Veluru Jogulakshmi was in possession and enjoyment of the property. But it was not mentioned till date. Therefore, the 2nd respondent now contend that the petitioner criminally trespassed into the land in Survey No.184/4, which belongs to Veluru Jogulakshmi. If the allegations made in the charge sheet are accepted on its face value would not constitute any offence and prayed to quash the proceedings at this stage.

Learned counsel for the petitioner contended that the pahani obtained by the petitioner for the land in dispute against the land in Survey No.184/4 of Velluru Jogulakshmi is not a conclusive as Government land and except based on one pahani, which is not certified copy filed along with the charge sheet and no other document is filed that the alleged land in Survey No.184/4 belongs to the Government and without any evidence, the present charge sheet is filed and requested the Court to quash the proceedings.

Learned Public Prosecutor opposed the petition on the ground that when the allegations made in the charge sheet, which is inclusive of statements recorded by the police under Section 161(3) Cr.P.C. discloses the commission of offence, *prima facie*, this Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings and requested the Court to dismiss the petition.

Considering rival contentions and perusing the material available on record, the point that arise for consideration is:

Whether the allegations made in the charge sheet in C.C.No.22 of 2018 pending on the file of Principal Junior Civil Judge-cum-Land Grabbing Court at Visakhapatnam constitute any offence, if not, whether the proceedings against the petitioner are liable to be quashed?

The jurisdiction of this Court under Section 482 Cr.P.C. is very limited and such jurisdiction can be exercised in exceptional circumstance to give effect to the orders passed under the Court or to prevent the abuse of process of law or to meet the ends of justice. At this stage, deciding the application under Section 482 Cr.P.C., this Court need not examine the minute details and the material produced before this Court and even the defence set up by the petitioner cannot be gone into in view of the law declared by the Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar**

& Others¹ held that the jurisdiction of this Court is limited and this Court cannot appreciate evidence available on record while exercising power under Section 482 Cr.P.C. and in **Umesh Kumar v. State of Andhra Pradesh and another²**.

The allegations made in the charge sheet dated 20.09.2015 as part of duties, Singapalli Padma, Vullage Revenue Officer and Sambarika Bangarraju, Village Revenue Assistant of Visakhapatnam Rural Mandal visited the Government land in Survey No.184/4 of Paradesipalem and found a car bearing No.AP27 L 5559. The petitioner along with other accused brought one JCB and leveling the Government land. Again on 13.09.2015 at about 9 hours, LW3 and LW.4 visited the land and found the accused planting instant trees and when they shouted to stop, they ran away from the site and on their observation, the said trees are coconut and mango instant trees and also found a board, written as land belonging to Achanta Bharani Kumar in the land in Survey No.184/4 of Paradesipalem. The petitioner and the accused never appeared before the Tahsildar, Visakhapatnam Rural along with documentary evidence to prove that they are owners of the land even after lapse of sufficient time. Again on 19.09.2015 the petitioner and other accused tried to enter into the land in Survey No.184/4 and continuing their activities to grab the valuable government land. These facts are supported by the statement of witnesses recorded by the police during investigation under Section 161(3) Cr.P.C. But the statements recorded by the police are not substantive piece of evidence and the basis for filing charge sheet along with the documents collected during investigation i.e. pahani and the observation report of scene of offence prepared by the Sub-Inspector of Police as part of investigation.

¹ AIR 1990 SC 494

² 2013 (10) SCC 591

The main endeavour of learned counsel for the petitioner is that he obtained pahani for the year 1420 Fasli and even according to the entries made therein one Veluru Jogulakshmi is in possession and enjoyment of the property. But it is settled law that the entries in pahanies are only for the fiscal purpose and the revenue authorities are preparing the pahanies for the land within their limits and even if Veluru Jogulakshmi continuing in possession of the property that would not confer any right over the property. Therefore, based on paharnies produced before the Court, the petitioner cannot claim title over the property. Even otherwise, the question of title is disputed question of facts to be decided only during trial and at this stage, this Court cannot come to the conclusion without any evidence before the Court that the land in Survey No.184/4 of Paradesipalem belongs to Veluru Jogulakshmi and not the Government land. On that ground, this Court cannot quash the proceedings in view of the limited scope of jurisdiction under Section 482 Cr..P.C. The Apex Court in **State of Haryana v Bhajanlal**³ laid down the following seven guidelines:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

³ 1992 Supp(1) SCC 335

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

If the above principles are applied to the present fact of the case, the proceedings against the petitioner cannot be quashed since the allegation in the charge sheet constitute cognizable of offence against the petitioner and it is not to wreck vengeance out of spite for settling the scores of private dispute. Hence, I find no ground to quash the proceedings at this stage.

Accordingly, the criminal petition is dismissed. However, leaving it open to the petitioner to raise all these contentions before the Court below and in the event if the petitioner raise such contentions, the Court below is bound to take into consideration and decide the case in accordance with law.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

06.08.2018
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