

HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE No.301 of 2015

ORDER:

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the orders passed in CrI.M.P.No.638 of 2014 in C.C.No.152 of 2007 dated 28.01.2015 on the file of the Judicial Magistrate of First Class, Atmakur, dismissing the petition filed under Section 245 Cr.P.C.

The case of the prosecution is that on 29.06.2005, LW.1 filed a complaint before the ASI, Sri K. Maddulety of Velgode Police Station (LW.9) to register a case against the accused, which includes the petitioners herein. Pursuant to the complaint, Crime No.59 of 2005 for the offence under Sections 468 and 420 IPC was registered. As per the orders of the Government, the Irrigation and CAD (IRR-III) Department, in order to form a new tank across Padmaraju Vagu near Indireswarim Village of Atmakur Mandal, has acquired the land of one Dr. T. Ranga Sai to the extent of Ac.9.64 cents with other adjacent lands. The Land Acquisition Officer fixed the compensation at Rs.10,000/- per acre. The land owner having not satisfied with the compensation made an application to the Land Acquisition Officer (A1) to make a reference to the civil Court. Accordingly, the matter was referred to the civil Court on 09.02.1992. The reference Court in its order fixed the market value of each Eucalyptus tree at Rs.122.60 ps for total 26,992 trees in Sy.No.207/2 and decreed for Rs.93,89,910/- with all benefits. Since there was suspicion on the entire issue, report was submitted by the District Collector to the Government. On the

basis of the said report, the Government directed a detailed enquiry to be conducted by the COT with regard to payment of compensation for Eucalyptus trees in the lands acquired. Subsequently, the enquiry officer also inspected the land along with the District Collector and others. As far as assessment of value of the growth of Eucalyptus trees are concerned, the District Forest Officer (A3) was addressed by the Revenue Divisional Officer and pursuant thereto, the District Forest Officer furnished valuation report for 22,992 Eucalyptus trees without physically enumerating the trees. In collusion with Dr. T. Ranga Sai, A3 considered different survival rates and different spacing for different survey numbers. On 07.02.2003, the officials of the Vigilance and Enforcement, Revenue and Minor Irrigation Department visited the land in question marking the Eucalyptus tree stumps with white paint and counted the stumps carefully. They have identified 4567 eucalyptus stumps in the entire field. Therefore, they came to a conclusion that A3 wrongly calculated and taken into account 26,992 stumps. In that context, the Revenue Divisional Officer (A1) failed to make any efforts to assess the number of Eucalyptus trees existed on ground and simply passed award for 26,992 Eucalyptus trees based on the report furnished by A3. A2 and A4, who are the petitioners working as DE and AE, MI Section, took possession of the land in question on 28.07.1998 without informing the revenue department and at the time of taking possession of the land they have failed to conduct panchanama regarding number of Neelagiri plants existing on ground. In those circumstances, all the accused, including the petitioners, were charged for the offence under Sections 468 and

420 IPC. Accordingly, a charge sheet was filed. The Court below, after taking cognizance of the offence, numbered the case as C.C.No.152 of 2007. In the said C.C., the prosecution has examined PWs.1 to 10. At that stage, the petitioners filed CrI.M.P.No.638 of 2014 under Section 245 Cr.P.C., to discharge them for the offence punishable under Sections 468 and 420 IPC.

Learned Assistant Public Prosecutor filed his counter and contested the matter. After hearing, the learned Magistrate was pleased to dismiss the petition by orders dated 28.01.2015. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioners contended that the Court below failed to appreciate that the prosecution witnesses i.e., PWs.1 to 10 in their chief examination have not deposed anything against the petitioners. On the other hand, they have deposed only against the Revenue Divisional Officer (A1) and the District Forest Officer (A3). In fact, this Court in CrI.P.No.2642 of 2008 quashed the proceedings against A3 by orders dated 26.04.2013. In that view of the matter, the Court below ought to have discharged the petitioners. Learned counsel also contended that the petitioners are working as Deputy Executive Engineer and Assistant Engineer in Irrigation Department, Kurnool, and they have discharged their official duties as Engineers in constructing Minor Irrigation Tank Bund and they are no way concerned with enumeration and counting of Eucalyptus trees, more particularly, the land acquisition proceedings, apart from other aspects.

Learned Public Prosecutor supported the impugned orders.

Having heard both the counsel and from a perusal of the material on record, the point that arises for consideration is:

Whether any prima facie case is made out against the petitioners for the offence under Sections 420 and 468 IPC?

The specific allegation made by the prosecution against the accused is that compensation has been paid for 26,992 Eucalyptus trees @ Rs.122.60 ps per tree instead of 4,567 Eucalyptus trees. As far as the said allegation is concerned, the Land Acquisition Officer/Revenue Divisional Officer (A1) has fixed the compensation @ Rs.10,000/- per acre. On his orders, the District Forest Officer, Social Forestry (A3) furnished the valuation report for 26,992 Eucalyptus trees in the land in question without physically enumerating the trees. As far as the assessment of value of the growth of Eucalyptus trees as well as the number of trees existing in the land in question are concerned, it is the primary duty of A1 and A3. In fact, on the report submitted by A3, the compensation was fixed by A1. As the petitioners are concerned, they being the Deputy Executive Engineer and the Assistant Engineer in Irrigation Department, Kurnool of Nandikotkur Sub-division, their duty was to construct minor irrigation tank bund. After the entrustment of the land in question, they have constructed the minor irrigation tank bund. Thus, they have absolutely no role vis-à-vis initiation of land acquisition proceedings or enumeration of number of trees existing in the land in question and the valuation of the same. The enumeration of the trees and the value of the same was the primary duty of A1 and A3. It is also pertinent here to mention that the Revenue Divisional Officer, Kurnool (A1) passed the award on 07.12.1991 based on the report submitted by A3. In fact, they are the officers, who have taken possession of the subject land on 28.07.1988. This Court in Crl.P.No.2642 of 2008 dated

26.04.2013 quashed the proceedings initiated against A3 for the above said offence. The Government of A.P., vide G.O.Rt.No.1289 dated 22.09.2006 issued orders to drop further disciplinary action against A4, as no case was found against him. As per the duties assigned to the petitioners, they are no way concerned with the enumeration of Eucalyptus trees in the land in question. They discharged their official duties as Engineers only to construct Minor Irrigation Bank Bund. Even PW.1 in his cross-examination has admitted that the petitioners are no way concerned with the land acquisition proceedings. It is also born out of record that the original beneficiary under the land acquisition proceedings i.e., Dr. T. Ranga Sai, who was arrayed as an accused, filed CrI.P.No.2069 of 2003 before this Court to quash the proceedings initiated against him in respect of the very same allegation in Crime No.20 of 2003, which is also the subject matter of the present case, and the same was allowed on 08.08.2006. The other important aspect in the present case is that the Executive Engineer, Minor Irrigation Division, Nandyal, is the competent authority, but, not the petitioners herein. When the petitioners approached this Court in CrI.P.No.7326 of 2013, this Court by orders dated 16.08.2013 granted permission to file a discharge petition before the trial Court and the trial Court is directed to consider and dispose of the same as expeditiously as possible. So in that view of the matter, it cannot be said that the discharge petition filed by the petitioners is not maintainable. Thus, a mere perusal of the material on record clinchingly establishes that the petitioners have absolutely no role for initiating the land acquisition proceedings or enumeration of the Eucalyptus trees and the valuation thereof. The petitioners

being the Engineers, their duty was only to construct the minor irrigation tank bund. Admittedly, when the prosecution witnesses have also not deposed anything against the petitioners apart from quashing of the proceedings against A3 and issuance of G.O.Rt.No.1289 dated 22.09.2006 by the Government to drop disciplinary proceedings against A4, this Court is of the opinion that it is a fit case where the proceedings initiated against the petitioners should not be allowed to continue. Otherwise, it amounts to abuse of process of the Court.

Accordingly, the criminal revision case is allowed, setting aside the orders passed by the learned Judicial Magistrate of First Class, Atmakur, in CrI.M.P.No.638 of 2014 in C.C.No.152 of 2007 dated 28.01.2015 and the petitioners are discharged for the offence under Sections 468 and 420 IPC.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 08.10.2018.
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