

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7305 of 2018

ORDER :

Track record regarding proof of service in USR No.84229 of 2018, dated 23.10.2018, filed shows the notice sent to the 2nd respondent was returned as unclaimed on 18.09.2018. Same is sufficient service.

2. The petitioner is the sole accused of C.C.No.587 of 2016 on the file of the XXIII Additional Metropolitan Magistrate, Rajendranagar, registered for the offences punishable under Sections 341, 447 and 427 IPC, which is out come of Crime No.237 of 2016, dated 12.08.2016. The 2nd respondent is the *de facto* complainant. The police after investigation filed the charge sheet and the learned Magistrate has taken cognizance for the offences supra, accused was summoned. It is impugning the said crime with police final report and cognizance order of the learned Magistrate, the present quash petition is filed.

3. The contentions in the quash petition are that the dispute is purely of civil in nature and there are no specific allegation as to alleged trespass with time and date and there is nothing to say in the absence of trespass and mischief in the private property of the *de facto* complainant attracting of any offence under Section 427 IPC, leave about no any wrongful restraint to attract under

Section 341 IPC. The same is the sum and substance with the contentions that even earlier for the acts of respondent No.2/*de facto* complainant, the petitioner reported to the police, who registered Crime No.73 of 2009, and after investigation filed the final report of civil nature and once that is civil nature in relation to the same property equally applies to the case on hand for the police to refer, however, filed charge sheet with no basis by simply examining the *de facto* complainant (LW.1) and another witness (LW.2) among six witnesses cited in the charge sheet, including LWs.3 and 4 are panchas to the so-called scene of offence and LW.5 is the Sub-Inspector of police, who issued F.I.R. and LW.6 is the Sub-Inspector of Police, who filed charge sheet, with those two statements and the so-called scene observation panchanama by making no effort to investigate properly.

4. A perusal of the two statements of the two witnesses, LW.1/*de facto* complainant in tune to the F.I.R. and LW.2 is that on 12.08.2016 they went to the field and found the house constructed by the accused which is part of 25 feet road place, which is the alleged trespass. Even from perusal of the police final report, there is no effort made to find out the so-called 25 feet road really in existence and no document of the *de facto*

complainant referred as to existence of any such way to his property and there is no even any survey or demarcation, which is the prerequisite, that too when earlier Crime No.73 of 2009 on the report of the petitioner registered and referred as civil nature there is nothing to say any alleged trespass specifically into the specific private property of the *de facto* complainant to file the police final report and to take cognizance, in the absence of trespass there is no offence of wrongful restraint or mischief.

5. Having regard to the above, the criminal petition is allowed quashing the proceedings pending against the petitioner/accused in C.C.No.587 of 2016 on the file of the XXIII Additional Metropolitan Magistrate, Rajendranagar. The bail bonds of the petitioner/accused shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23rd October 2018.

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