

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7390 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioners-accused to quash the proceedings against them in crime No. 194 of 2018 of Dharmavaram Urban Police Station, Ananthapuramu District, registered for the offences punishable under Sections 447, 427 and 506 read with Section 34 of IPC.

2. Respondent No. 2 lodged a written report with the police alleging that there are disputes between him and the petitioners regarding his house site and that in pursuance of the orders from this Court, he started construction in his site and on knowing that, the petitioners criminally trespassed into his site, highhandedly behaved with him and damaged the construction and also threatened him with dire consequences. On the strength of the report, the above crime was registered for the offences referred *supra*.

3. The present petition is filed on the ground that though O.S.No. 2 of 2011 filed by the petitioners on the file of the Court of II Additional District Judge, Hindupur (for short, 'the Court below'), for declaration of title and permanent injunction was dismissed, the reason for dismissal is only a technical ground and the Court below made a clear observation in para No. 43 of the judgment that the defendants failed to establish their independent source of title and possession; that feeling aggrieved by the decree and judgment, the petitioners preferred appeal before this Court and this Court directed both parties to maintain *status quo*; that later, the petitioners filed a petition alleging violation of the *interim* order passed by this Court and the same was ended in dismissal as the petitioners failed to prove the alleged violation of the order and that lodging report with the

police alleging that the petitioners trespassed into the land, which is the subject matter of the suit, is nothing but an abuse of process of the Court and prayed to quash the proceedings against them.

4. At the hearing, while learned counsel for the petitioners has reiterated the grounds raised in the petition, learned Public Prosecutor (A.P.) has contended that at this stage, the proceedings cannot be quashed as investigation is not yet commenced.

5. As seen from the material on record, the petitioners admittedly filed O.S.No. 2 of 2011 on the file of the Court below claiming the relief of declaration of title and consequential relief of permanent injunction. The said suit was dismissed after full-fledged trial. Feeling aggrieved, the petitioners preferred appeal before this Court and the same is pending for adjudication. Pending the appeal, this Court directed both parties to maintain *status quo* by order dated 19-09-2017 in I.A.No. 1 of 2017 without deciding as to who is in possession as on the date of passing the order which led to the anomalous situation in the present case. However, this Court in the present petition cannot decide the issues involved in pending appeal. *Prima facie*, the petitioners failed to prove their title to the property and their possession in view of the finding recorded by the Court below is not disturbed as on date. When the suit is dismissed and the appeal is pending, the petitioners now cannot assert that they are in possession and enjoyment of the property based on the finding recorded by the trial Court in O.S.No. 2 of 2011. In any view of the matter, the allegations made in the compliant if accepted on their face value, they would certainly constitute the offences referred *supra*.

6. The Apex Court in State of **Orissa Vs. Saroj Kumar Sahoo**¹ held that the inherent powers under Section 482 of Cr.P.C. should not be exercised by High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. In the case on hand, the investigation is at the threshold and at this stage, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings, more particularly when the allegations made in the complaint would constitute the above offences.

7. In view of my foregoing discussion, I find no ground to quash the proceedings against the petitioners at this stage and the petition is liable to be dismissed.

8. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 17-07-2018.

JSK

M.SATYANARAYANA MURTHY, J.

¹ (2005) 13 SCC 540