

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.35332 of 2018

ORDER:

The petitioner who is the accused in crime No.209 of 2018 dated 11.07.2018 originally registered for the offences punishable under Sections 448, 427 r/w 34 IPC by Chaderghat Police Station, it appears from the counter of the respondents memo adding Sections of law filed by including the penal provisions under Sections 420, 467, 468 & 471 IPC also in the present crime supra vide memo dated 17.12.2018 before the learned VIII Additional Chief Metropolitan Magistrate, Nampally, maintained the writ petition against the respondents viz., State of Telangana represented by Principal Secretary to the Government, Home Department and SHO, Chaderghat Police Station, with the prayer in the writ petition as follows:

“.....to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the action of the 2nd respondent authority in registering the case in FIR.No.209/2018 Dated 11-7-2018 under Sections 448, 427 read with 34 IPC against the petitioner of Police Station Chaderghat, Hyderabad as illegal, unauthorized under law and also against the principles of natural justice and consequently Quash the FIR No. 209/2018 Dated 11-7-2018 under Sections 448, 427 read with 34 IPC of Police Station Chaderghat against the petitioner and pass such other order or orders.....”

2. The contentions in the writ petition in support of the prayer from the affidavit of the petitioner/accused supra of the crime are that he is the owner and possessor of the house bearing municipal No.16-6-34, admeasuring 70 square yards of Chaderghat locality of Hyderabad city which he gifted through gift settlement deed to his son Mohd. Imtiyazuddin on 22.02.2018 covered by registered document No.1903/2018 and he is the owner and possessor of the property since his fathers time with more than 70 years continuous possession as owner also by paying municipal tax and Hyderabad Metropolitan Authority acquired portion of the land out of it and paid compensation to him also and he obtained permission to dug bore well from the Tahsildar, Chaderghat by proceedings in letter No.B/395/2018 dated 23.03.2018 and TSLR record shows the property in question bearing house No.16-6-34 is a private property and thereby he and his donee son got unquestionable title with possession over the property and when the SHO, Chaderghat, tried to interfere with his possession he filed WP.No.18124 of 2018 before this Court and by recording the submission of the learned GP for the SHO stating they are not going to interfere with the alleged possession the writ petition was disposed of and ignoring the same the SHO, Chaderghat-2nd respondent herein is even trying to interfere with the possession and enjoyment of the petitioner and his son and he filed CC.No.2140 of 2018 questioning the constant interference

and to pressuring him with mischief a false case is filed against him and in registration of the present crime it requires to be quashed. It is also the submission that earlier CC.No.297 of 2002 registered against him by Chaderghat PS and outcome of crime registered against the petitioner by selfsame Chaderghat PS with CC.No.297 of 2002 on the file of learned XVI Metropolitan Magistrate, Nampally, where after trial he was acquitted and having no other alternative thereby he is constrained to file the writ petition to quash the FIR.

3. The counter affidavit of the 2nd respondent-SHO, Chaderghat, is with the contentions that the writ petition is not maintainable, the averments are no way sustainable and there are no ground to quash the FIR that was registered having noticed of the illegal trespass into the Government land by damaging the compound wall of the police outpost at Chowki Chaderghat and on making discrete enquiry of the persons trespassed into the land it came to know that petitioner along with others trespassed thereby registered the crime and the case is under investigation and the SHO addressed letter to the RDO, Hyderabad on 11.07.2018 for survey of the house bearing No.16-6-34 of the 70 square yards of Chowki Chaderghat near Darbar Maisamma Temple which is under the possession of the Chaderghat PS and to issue report which is awaited. A letter dated 21.07.2018 addressed to the Deputy Commissioner, GHMC Circle-VI, Sardar Mahal, Hyderabad, required to provide ownership

particulars to disprove the claim of the petitioner for the peace of land as if owned and possessed and the electricity bills and tax invoices etc., placed reliance by him are nothing but fabricated to make the false claim to the police department land belongs to the Government. The investigation so far revealed that the clearly earmarked in the maps as plan of Pochamma Gudi verified on the right bank of the Musi river certified by the Superintendent, Office of the Assistant Commissioner, Endowments, Department vide No.E/460/2015 under RTI Act in which field work finished in May, 1913 and in both maps the police land was demarked near Darbar Maisamma Temple at Chaderghat gate and a copy of the Hyderabad Municipal Survey map and file No.378/D1/1961 dated 03.03.1965 statement of endowment prepared by the office of Director and Joint Secretary (Endowments), showing police Naka open land as east boundary to Maisamma Temple that establishes the land belongs to the police department of Chaderghat and the so called gift deed No.1903/2018 recently created without basis to grab the property. As per the old records, the petitioner himself addressed letter to the Commissioner of Police, Hyderabad, on 09.07.2001 stating he is motor mechanic with workshop in the premises No.16-6-34/3 of Chaderghat and in the road widening program a portion of land belongs to the police limits Chaderghat was taken and there is left over 32.33 square yards behind the road margin after the road

widening that is not in use for any purpose and said peace of land is in front of workshop to be useful for him to carryout the workshop hence requested to allot said peace of land for which he undertakes to pay the value as fixed by the authorities and the Hon'ble MP of the Constituency Salauddin Owaisi while enclosing the request of his father sent a recommendation letter dated 08.07.2011 to the Commissioner to allot the same to Mr. Mohd Kaleemuddin as per market value and it was not considered by the Department and having applied the land for allotment and tried to trespass it is thereby earlier a case was registered in crime No.241 of 2001 which no doubt ended in acquittal and he cannot claim any right over the property even therefrom he suppressed the factum of WP.No.25329 of 2018 filed by him against the respondents with alleged threatened interference in relation to municipal No.16-6-34, admeasuring 70 square yards of Chaderghat locality and the same was disposed of on 28.08.2018 granting liberty to the petitioner to avail alternative remedies under law and thereby there are no grounds to quash the FIR.

4. Sufficient to say the petitioner intentionally suppressed the said material factum of earlier he filed writ petition No.25329 of 2018 and the order dated 28.08.2018 thereunder while under contest he has withdrawn to pursue available alternative remedies which is supposed to disclose being the party petitioner to the writ petition. What the

learned counsel for the petitioner mentioned of he filed, he made a mention at end of Para 5 of another writ petition filed questioning the constant interference by the 2nd respondent authority and the above matters were pending for adjudication before the Court. This is more than suppression deliberately by non-mention of said writ petition and no more words are required to say it is suppression of material fact. That fact thus goes into the root of the matter not to exercise discretion apart from factual matrix shows no grounds to quash the FIR.

5. Having regard to the above, this Writ Petition is disposed of rather than dismissal even it can be dismissed for the sole ground supra, so that the police can complete investigation and file final report and in the meantime not to arrest the petitioner, however it will not prevent the police to secure the presence of the petitioner for the purpose of investigation by issuing written notice and if he failed to comply they can proceed as contemplated by Section 41-A Cr.P.C. and the guidelines of the Apex Court in **Arnesh Kumar Vs. State of Bihar**¹.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.12.2018
ska

¹ 2014 (5) Supreme 324 = AIR 2014 SC 2756