

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11684 OF 2018

ORDER:

The petitioners are A1 to A4 in C.C.No.583 of 2017 on the file of the Judicial First Class Magistrate, Tadepally Gudem, West Godavari District, for the offences punishable under Sections 447, 427 r/ w 34 IPC which is outcome of Crime No.47 of 2016, dated 29.03.2016 on the report of the 2nd respondent/ de facto complainant.

2. The police, after investigation filed the final report that was taken cognizance by the learned Magistrate in summoning the accused. The same is under impugment herein, in seeking to quash the said C.C. proceedings.

3. Heard the learned counsel for the petitioners, the learned Public Prosecutor representing the State and learned counsel for the 2nd respondent/ de facto complainant and perused the entire material on record.

4. Undisputedly before the report dated 29.03.2016, there is a pending civil lis for the self same property on the file of the Senior Civil Judge, Tadepalligudem in OS.No.289 of 2015 maintained by A1 as sole plaintiff against the de facto complainant/ 3rd defendant besides two others. Pending the suit for prohibitory permanent injunction, there was an application in I.AN.o.1677 of 2015 where ad-interim injunction ex parte was granted on 30.11.2015, while posting the matter to 18.12.2015 for service of notice to the respondents meanwhile, by

restraining the respondents/ defendants not to interfere with the plaint schedule property. The prayer is for temporary injunction pending disposal of the suit. The order pending consideration of temporary or interim injunction was an ex parte ad-interim injunction from the above. The said injunction order is undisputedly even date in force including as on the date of the said report of the de facto complainant to the police on 29.03.2016. It is contrary to the very injunction order in force leave about any counter contest, plaintiff is not in possession, 3rd defendant delivered the possession so long as injunction order not vacated for all practical purposes, the plaintiff/ A1 herein is in possession of the property by virtue of the Court order.

5. So far as the report of the de facto complainant in registration of the crime on 29.03.2016 for the offences punishable under Sections 447 and 379 r/ w 34 IPC concerned, it is the say that the land of Ac.1.70 cents in Sy.No.549/ 3 of Singarajupalem Village is under the cultivation of de facto complainant along with one Komali Durgarao and raised maize crop and that on 15.03.2016 at about 3.00 p.m. A1 and his sons, A2 to A4 among others of the village cut and taken away the standing maize crop, which is worth of Rs.1,50,000/- thereby, to take action. It is further stated that the above persons through elders wanted to settle the issue and return back crop and having waited for all these days, he had chosen to report for the alleged occurrence dated 15.03.2016 after 14 days on

29.03.2016. He did not even mention before whom the so called elders in dispute raised where any promise made, though, it is material to explain the so called delay of 14 days in reporting the occurrence to the police in registration of the crime leave about from the very ad-interim injunction order, the de facto complainant is not at all in possession but for A1 and his sons A2 and A3 and their worker or person claiming through personally if at all A4.

6. Once there is possession and cultivation by the de facto complainant is in dispute, by virtue of the temporary injunction order, the unsustainability of the crime is bleak. Law is fairly settled in this regard by the expressions of the Apex Court in *Munshiram v. Delhi Administration*¹ that where there is dispute in relation to property in question, the claim under so called theft may not survive and the very injunction order is sufficient for the Court to consider without driving to put it as defence invoking Section 105 of the Evidence Act from the very wording of Section 6 of the Indian Penal Code which imposes primary duty on the Court that through out the Code every definition of an offence, every penal provision, every illustration of such offence or penal provision, thereby understood, subject to exceptions contained in the chapter under general exceptions do not repeat such definitions with every provision. Thus, prima facie to make out a case under Sections 379 and 427 IPC, as per Section 6 IPC, it is primary duty of the Court to primarily

¹ AIR 1968 SC 702

consider whether the case comes under general exceptions contemplated by Sections 73 to 106 IPC.

7. Having regard to the above, to sub-serve the ends of the justice, the Criminal Petition is allowed and the proceedings against the petitioners/ A1 to A4 in C.C.No.583 of 2017 on the file of the Judicial First Class Magistrate, Tadepally Gudem, West Godavari District are quashed and their bail bonds if any shall stand cancelled. This complication arises because of the learned Senior Civil Judges not chosen to dispose of the ad-interim ex parte injunction application, while continuing the injunction despite mandate of order 39 Rule 3 CPC of disposal within 30 days from appearance of other side. Thereby, the learned Senior Civil Judge, by virtue of this order, shall make every endeavour for early disposal of the temporary injunction application on merits preferably within one month. Registry to mark the copy of this order to the learned Senior Civil Judge, Tadepalligudem to comply with.

8. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:06.12.2018
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