

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.12407 of 2017

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioner/A1 seeks to quash the proceedings against him in C.C.No.2 of 2017 on the file of Principal Junior Civil Judge-cum-Special Court of Land Grabbing, Visakhapatnam.

2) The brief facts of the case are that *defacto* complainant a retired Port Trust employee, Visakhapatnam purchased an extent of Ac.0.04 cts. in Sy.No.128/11 from one Nimmala Appalanaidu and Ac.0.23 cts. in Sy.No.128/14 from one Ch.Adinarayana totaling Ac.0.27 cts. vide document No.1087/2008 and got pattadar pass book for the said lands from Tahsildar, Anandapuram. Whiles, Accused Nos.1 and 2 with a criminal intention to grab the above said land, fabricated forged documents as if A2 was in possession and enjoyment of Ac.0.23 cts. in Sy.No.128/14 and both entered into a sham transaction as if A2 sold Ac.0.23 cts. in Sy.No.128/14 of Anandapuram village to A1 vide document No.1690/2015 and encroached the said land and removed the caution board erected earlier by *defacto* complainant and erected a new caution board. When the complainant and his family members questioned the said illegal action, A1 abused and threatened them to kill. Therefore, the *defacto* complainant lodged a complaint before Anandapuram PS. Basing on the said complaint, the police registered a case in Cr.No.134 of 2015 and after investigation filed the charge sheet. The learned Magistrate took cognizance of the same and numbered as C.C.No.2 of 2017.

Hence, the instant petition for quashment.

3) Heard arguments of Sri Mavidi Rama Rao, learned counsel for petitioner, learned Additional Public Prosecutor (AP) for respondent No.1 and Sri N.Ashwani Kumar, learned counsel for the 2nd respondent/complainant.

4) Severely fulminating the charge sheet allegations, learned counsel for petitioner would argue that the charge sheet allegations even if uncontroverted would not divulge any of the offences such as Sections 465, 468, 471, 420, 447, 427, 506 r/w 34 IPC and Sections 3 and 4 of A.P. Land Grabbing Act and trial Court ought not to have taken cognizance and rejected the charge sheet at the very first instance. In expatiation, he would argue that the petitioner is neither a trespasser nor created any false and fabricated records nor cheated the complainant. On the other hand, he is a *bona fide* purchaser of Ac.0.23 cts. of land in Sy.No.128/14 from Accused No.2 who is the owner and pattadar of the said land. When complainant and his wife illegally tried to claim ownership of the said land he resisted them in order to protect his lawful possession. Learned counsel further submitted that accused have produced the concerned record before the Investigating Officer (IO), but without heeding them and conducting investigation in a proper lines he filed charge sheet though his investigation surfaced that the issue is purely relating to a civil dispute in respect of Ac.0.23 cts. between both the parties. He thus prayed to quash the proceedings.

5) Learned Addl.P.P. and learned counsel for 2nd respondent/complainant opposed the petition and submitted that A1 and A2 colluded together and

fabricated false record and thereafter created sale deed in favour of A1 to grab Ac.0.23 cts. of land in Sy.No.128/14 and therefore, the IO has rightly filed charge sheet against them.

6) The point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT:** On perusal of charge sheet and other record and upon hearing both parties, I find considerable force in the submission of learned counsel for petitioner/A1. The bone of contention in this case is Ac.0.23 cts. of dry land in Sy.No.128/14 of Anandapuram Mandal. It is the claim of the complainant that he purchased the disputed land of Ac.0.27 cts. in Sy.No.128/14 and another A.0.04 cts. in Sy.No.128/11 totaling Ac.0.27 cts. from Charakana Adinarayana and Nimmala Appalanaidu on 12.05.2008 and got registered in the name of his wife (LW2) and therefore, the family members of the complainant are the owners of the disputed land. It is his further case that the accused have got manipulated the revenue records and thereafter created forged documents and sale deed in favour of A1 in respect of dispute land. On the other hand, the contention of petitioner/A1 is that A2 is the owner and pattadar of Ac.0.23 cts. in Sy.No.128/14 from whom A1 purchased the same under registered document No.1690/2015 dated 20.04.2015 and he has been enjoying the said land and complainant and his family members were never in possession of the said land and when they made a false claim in respect of disputed land, petitioner/A1 resisted against their unlawful claim. Thus, both parties are claiming ownership and possession over the disputed land of

Ac.0.23 cts. in Sy.No.128/14. Therefore, the dispute is predominantly a civil dispute as rightly contended by counsel for petitioner/A1.

8) A perusal of material papers filed by the petitioner/A1 shows that the revenue authorities i.e. Mandal Revenue Officer, Anandapuram issued pattadar pass book and title deeds in favour of A2 in respect of disputed land of Ac.0.23 cts. in Sy.No.128/14 along with other lands. The title deed and pattadar pass book would show that the date of first entry in his name was on 13.06.1995. Apart from title deed and pattadar pass book, 1-B Namuna (ROR) issued by Tahsildar, Anandapuram shows the name of A2 as pattadar of Ac..0.23 cts. in Sy.No.128/14. Therefore the crucial question is, whether A2 is the genuine owner of the disputed property or the vendors of the complainant are the genuine owners. In my considered view, this aspect has to be agitated either before the revenue authorities or before a competent civil court. The police in criminal proceedings cannot decide this issue. The charge sheet is woefully silent as to how the IO has come to a conclusion that accused have committed so many offences such as Sections 465, 468, 471, 420, 447, 427, 506 r/w 34 IPC and Sections 3 and 4 of A.P. Land Grabbing Act. Except mentioning that on his enquiry LW12—Tahsildar, Anandapuram revealed that LW2 is the pattadar of the disputed land, nothing more is mentioned to justify that the accused have committed the aforesaid offences. It is to be noted that when the pattadar pass book, title deed and 1-B register show the name of A2 as the owner of the disputed property, it is not known how the IO could determine the guilt of accused. At any rate, as already noted supra, the dispute

is purely a civil oriented one and therefore, the remedy for complainant is elsewhere and not in the criminal case.

9) Accordingly, this Criminal Petition is allowed and the proceedings in C.C.No.2 of 2017 on the file Principal Junior Civil Judge-cum-Special Court of Land Grabbing, Visakhapatnam are quashed so far as petitioner/A1 is concerned.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 17.08.2018
Murthy



U. DURGA PRASAD RAO, J