

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRI MINAL REVISION CASE No.929 OF 2017

ORDER:

Impugning the dismissal docket order, dated 20.01.2017, of the discharge application of the petitioners in CrI.M.P.No.1154 of 2016 in C.C.No.905 of 2013 passed by the learned IX Metropolitan Magistrate, Cyberabad, Kukatpally, the present revision case is filed with the contentions that the impugned dismissal order is passed by non-application of mind by non-consideration of the scope of law covered by the provisions of Sections 427 and 447 I.P.C. and the learned Magistrate ought to have allowed the discharge application.

2. In the course of hearing, learned counsel for the petitioners reiterated the same. Whereas, it is the submission of the learned Public Prosecutor, representing the 1st respondent - State and the 2nd respondent – Tahsildar, since impleaded, that the dismissal order of the discharge application nowhere requires interference, but for to direct the petitioners to face trial by left open all defences and thereby, sought for dismissal of the revision case.

3. Heard both sides at length. Perused the material on record.

4. A perusal of the record shows, for the alleged disobedience of the Government Order under Section 188 I.P.C., by so called trespass in referring to *status quo* order in W.P.No.14468 of 2010 of this Court

passed prior to 11.02.2012, Crime No.55 of 2012 was registered against the petitioners on the self-same report of the Tahsildar – cum – Deputy Collector, G. Subba Rao. The said proceeding was covered by a quash petition in Crl.P.No.1864 of 2012 that was allowed by another learned single Judge of this Court on 04.12.2015 quashing the said criminal proceeding. Not contended with that another crime earlier to it; needless to refer the previous history of; with similar allegations with similar criminal provisions in Crime No.480 of 2011, dated 14.11.2011, was registered by the same police against the self-same petitioners on the self-same complaint of the Tahsildar for the offence punishable under Section 188 I.P.C. That was also quashed by order, dated 04.12.2015, in Crl.P.No.1454 of 2012, which is subsequently covered by the present report, dated 12.02.2012, in saying dumping of the mud and boulders into the Patel Cheruvu by Proprietor of the Krishna Theatre, J. Ramulu, by referring to Miyapur Village Survey Nos.70 and 71 and also the earlier Writ Petition No.14468 of 2010 and the *status quo* order of this Court, hence to take action, from which the earlier Crime No.55 of 2012 was registered that meted the fate referred supra.

5. Coming to the present Crime No.198 of 2012, dated 24.04.2012, the gist of the report of the self-same Tahsildar, G. Subba Rao, speaks that on inspection of Government lands as well as tanks situated in Miyapur Village, it is found that the petitioners are

dumping mud on the backside of existing Theatre in Survey No.70 of Patel Cheruvu. The same is registered for the offences punishable under Sections 447 and 427 I.P.C. and Sections 4 and 5 of the A.P. Land Grabbing Act.

6. No doubt, the report speaks about pouring of mud and boulders into Survey No.70. There is no dispute on the fact that Survey No.70 is a tank bed or river poramboke, whereas Survey No.71 with Theatre is the private land of said J. Ramulu, the accused supra. The only thing to consider, leave about if at all the *status quo* order of this Court violated provoking for contempt proceedings, is whether there is any trespass and mischief and any grabbing of land. It is not the case of prosecution that the petitioners encroached into the land with specific measurements in demarcating boundary with Survey No.70 into Survey No.71 to register the case under Sections 4 and 5 of the Land Grabbing Act. Therefore, the question of attracting the provisions of Sections 4 and 5 of the Land Grabbing Act does not arise, leave about to be registered to take cognizance only by the designated Court under the Land Grabbing Act covered by the Government Order and not by any local First Class Magistrate. In fact, so far as the fate of the present crime covered by Sections 4 and 5 of the Land Grabbing Act is concerned, another Bench of this Court by order, dated 28.09.2012, in Crl.P.No.5315 of 2012 quashed the present crime for the offences punishable under Sections 4 and 5 of

the Land Grabbing Act, without going into the merits of the case, as to how far the said order, dated 28.09.2012, is correct for not assailing, much less by appeal before the Honourable Supreme Court by the prosecution that attained finality and without any further material or not even a case subsequently of any other offence, conducted investigation and taken and collected material to investigate, much less to take cognizance by the Judicial Magistrate supra not even referred to as a designated Special Court under the Land Grabbing Act, thereby, without further discussion without going into the further merits of the case, so far as cognizance order for the offences punishable under Sections 4 and 5 of the Land Grabbing Act are concerned are liable to be quashed to allow the petition in part.

7. Even coming to attract or not of offences punishable under Sections 447 and 427 I.P.C., it is not the case, on a particular day or time a particular activity of alleged trespass and mischief committed. The allegations are vague has nothing to say violating the Writ Petition *status quo* order. That was the version even covered by earlier two F.I.Rs. quashed by this Court. As per the orders referred supra, one such is the case how far the cognizance of the learned Magistrate for the offences punishable under Sections 427 and 447 I.P.C. is sustainable is concerned, even from the investigation from the police final report referring to 9 witnesses, which including two Investigating Officers, two panch witnesses besides G. Subba Rao -

the Tahsildar - LW.1, one Sameel Miya - the Revenue Inspector, and three private persons of Miyapur - LWs.3 to 5, what all mentioned therein is there is no discussion in the charge sheet, running into four pages, as to which witness stated which fact as to alleged specific act of trespass or mischief to attract the provisions under Sections 427 and 447 I.P.C. What all stated is from the report, crime registered, recorded the statements of LWs.1 to 5, visited the scene of offence, conducted scene observation panchanama in the presence of LWs.6 and 7, arrested the accused, remanded them to judicial custody and filed charge sheet. A perusal of the record clearly shows it is a civil dispute and even there are charge sheets referred supra and nothing shows of any demarking existing boundaries between Survey Nos.70 and 71 and to what extent in Survey No.70 - tank bed poramboke any encroachment made by the petitioners with what type of mischief at all to attract the penal provisions.

8. Having regard to the above, the Criminal Revision Case is allowed by setting aside the order, dated 20.01.2017, passed in Crl.M.P.No.1154 of 2016 in C.C.No.905 of 2013 on the file of IX Metropolitan Magistrate, Cyberabad, Kukatpally, without prejudice to the authorities to take recourse either under the Land Encroachment Act or Land Grabbing Act or other civil law remedy, as the case may be. Consequently, Crl.M.P.No.1154 of 2016 in C.C.No.905 of 2013 on the file of IX Metropolitan Magistrate, Cyberabad, Kukatpally, is

allowed and the petitioners are discharged of the offences punishable under Sections 427 and 447 I.P.C.

Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

DR. B. SIVA SANKARA RAO, J

February 18, 2019.
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THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO



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