

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 2306 of 2015

ORDER:

The present Criminal Petition is filed by the petitioner/accused under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against him in C.C.No.652 of 2014 on the file of the IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District.

The facts in issue are as under:

The 2nd respondent/*de facto* complainant lodged a report on 11.06.2013 stating that he along with his brothers are absolute owners and possessors of the land admeasuring Ac.2.00 situated in Sy.No.295-A of Adibatla Village, Ibrahimpatnam Mandal, Ranga Reddy District, having purchased the same from the original owner Erukala Chandra Sekhar (petitioner herein) through a registered sale deed bearing document No.6577 of 2008, dated 04.09.2008. It is stated that the neighbours of the land by name G.Sudarshan Reddy with the help of his Supervisor-Karunakar Reddy, have criminally trespassed into the land and started construction of boundary wall, in spite of receiving the copy of the interim injunction order passed in I.A.No.259 of 2013 in O.S.No.56 of 2013. Basing on the said complaint, the police registered a case in Crime No.299 of 2013 for the offences punishable under Sections 447 and 427 of I.P.C. against G.Sudarshan Reddy and Karunakar Reddy. After due investigation,

the police concluded that the allegations made by the 2nd respondent/*de facto* complainant against G.Sudarshan Reddy and Karunkar Reddy are not proved and filed charge sheet against the petitioner/accused for the offence punishable under Section 420 of I.P.C., alleging that after having knowledge that the land admeasuring Ac.0.14 gts., in Sy.No.295 was acquired by the ORR authorities for the purpose of Outer Ring Road, he sold away the land to the said G.Sudarshan Reddy, Karunkar Reddy and others and committed an offence punishable under Section 420 of I.P.C. The said charge sheet was taken cognizance and numbered as C.C.No.652 of 2014. The present Criminal Petition is filed to quash the proceedings in the above C.C.

Heard learned Counsel for the petitioner/accused, learned Additional Public Prosecutor for the 1st respondent and the learned Counsel for the 2nd respondent/*de facto* complainant.

Learned Counsel for the petitioner/accused would submit that if the entire allegations in the charge sheet are looked into, they do not constitute any offence punishable under Section 420 of I.P.C., as such the initiation and continuation of criminal proceedings are nothing but an abuse of process of Court. It is also submitted that the 2nd respondent herein filed a complaint against Sudarshan Reddy and Karunakar Reddy saying that they are encroaching his land and proceeding with the construction and requested the police to take action, but the Investigation Officer as if he is deciding a civil dispute

as an adjudicating agency contrary to the allegations made in the complaint filed charge sheet stating that in a suit filed in O.S.No.56 of 2013, either G.Sudarshan Reddy or Karunakar Reddy are not parties, as such nothing is proved against them and the petitioner, who is the original owner of the said land and who sold it to the 2nd respondent/*de facto* complainant, has committed the offence under Section 420 of I.P.C. and that the same is nothing but illegal, null and void. The petitioner/accused has not committed any offence and there is no allegation against him at all. It is further submitted that the brothers of the 2nd respondent/*de facto* complainant already filed O.S.No.56 of 2013 and the same is pending before the Junior Civil Judge, Ibrahimpatnam, as such it appears that the dispute is purely civil in nature between the 2nd respondent/*de facto* complainant and his neighbours and the petitioner/accused had sold away his land long back and he is in no way concerned with the same. Therefore, continuation of proceedings against the petitioner/accused is nothing but an abuse of process of Court.

Learned Additional Public Prosecutor would submit that after thorough investigation, the police filed charge sheet against the petitioner/accused and there is nothing wrong in it.

Learned Counsel appearing for the 2nd respondent/*de facto* complainant would submit that the 2nd respondent/*de facto* complainant, along with his brothers, purchased the subject land from the petitioner/accused and they were not having any disputes

with the petitioner/accused and the petitioner/accused has not caused any harm to them with regard to the land. It is also stated that the 2nd respondent/*de facto* complainant filed complaint against Karunakar Reddy and Sudarshan Reddy for the offence of criminal trespass, but the police filed charge sheet against the petitioner/accused and that the 2nd respondent/*de facto* complainant filed a protest petition as the police did not make the said Karunakar Reddy and Sudarshan Reddy, as accused for the offence of criminal trespass.

In *Devendra v. State of U.P.*¹, the Apex Court held as under:

"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

In *Joseph Salvaraja vs. State of Gujarat and others*² Hon'ble the Apex Court has held as under:

"Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the Complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the

¹ (2009) 7 SCC 495

² (2011) 7 SCC 59

Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not.

In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.

The Appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the Appellant by the Complainant-Respondent No. 4, and is still subjudice. In the said suit, the Appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by Trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the Appellant and Respondent No. 4 - the Complainant. There was no cause of action to even lodge an FIR against the Appellant as neither the Complainant had to receive the money nor he was in any way instrumental to telecast "GOD TV" in the central areas of Ahmedabad. He appears to be totally a stranger to the same. Appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

In *Mohammed Ibrahim and others vs. State of Bihar and another*³ Hon'ble the Apex Court has held as under:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.”

In the instant case, a perusal of the material on record would show that the 2nd respondent/*de facto* complainant along with his brothers had purchased the land from the petitioner/ accused in the year 2008 and after purchase, the revenue authorities sub-divided the said land and their names have been got mutated vide proceedings No.B/2663/2008 dated 14.10.2009 and the revenue authorities also issued pattadar pass books and title deeds in their favour. When the neighbouring land owner by name G.Sudarshan Reddy with the help of Supervisor Karunkar Reddy, have criminally trespassed into the said land and started construction of boundary wall on western side, the 2nd respondent/*de facto* complainant lodged a report against them and basing on the same, the police registered a case in Crime No.299 of 2013 for the offences punishable under Sections 447 and 427 of I.P.C., but the police filed charge sheet against the petitioner/accused

³ (2009) 8 SCC 751

for the offence punishable under Section 420 of I.P.C. by deleting the said persons.

Further, the contents of the charge sheet itself discloses that the brothers of the 2nd respondent/*de facto* complainant filed O.S.No.56 of 2013 for grant of perpetual injunction against Gujjala Sudershan Reddy, with regard to the subject land and the same is pending before the Junior Civil Judge, Ibrahimpatnam. By an order, dated 17.09.2013, the learned Junior Civil Judge, granted interim injunction in respect of the disputed land. Apart from that the petitioner/accused placed on record the deposition of the 2nd respondent/ *de facto* complainant, who was examined as P.W.1 in the above C.C. The 2nd respondent/*de facto* complainant in his cross-examination deposed that they are not having any disputes with the petitioner/accused and the petitioner/accused never caused any harm to them with regard to the land.

Having regard to the principles laid down by the Apex Court in the cases referred to above and in view of the admission made by the 2nd respondent/*de facto* complainant in his cross-examination that he along with his brothers has no dispute with the petitioner/accused and the petitioner/accused never caused any harm to them with regard to the land, I am of the considered view that continuation of criminal proceedings against the petitioner/accused will be a futile exercise and would amount to abuse of the process of Court.

For the aforementioned reasons, the Criminal Petition is allowed and the proceedings in C.C.No.652 of 2014 on the file of the IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District, against the petitioner/accused for the offence punishable under Section 420 of I.P.C., are hereby quashed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand dismissed.

27.12.2019
gkv/Gsn

JUSTICE G.SRI DEVI

