

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 7602 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/ A1 to A3 under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against them in C.C.No.2 of 2017 on the file of the I-Additional Judicial Magistrate of First Class, Warangal.

The facts in issue are that the 2nd respondent/*de facto* complainant filed a private complaint against the petitioners/ A1 to A3 before the Judicial Magistrate of First Class, Warangal, for the offences punishable under Sections 323, 447, 448, 452, 504 and 506 of I.P.C., which was referred to the police under Section 156 (3) of Cr.P.C. Basing on the said reference, the police, Inthezargunj Police Station, registered a case in Crime No.199 of 2016 and took up investigation. After completion of investigation, the police filed charge sheet, which was taken cognizance as C.C.No.2 of 2017.

The allegations in the charge sheet are that the 2nd respondent/*de facto* complainant is a resident of Kashibugga and his father Adepu Kumaraswamy purchased a house site admeasuring 208 square yards in Sy.No.30/A situated at Laxmipuram Revenue Village, Warangal Town on 16.03.1981 from one Singamsetti Koumraiah and got the same registered. The neighbours i.e., the petitioners/ A1 to A3, filed a civil suit before the II-Additional Senior Civil Judge and obtained an ad-interim injunction order in their favour. On 17.04.2016 at about 10.00 A.M., while the 2nd respondent/*de facto* complainant was at the subject

land, the petitioners/ A1 to A3, raised quarrel against him and abused him in most filthy language, moreover, they also threatened him by showing the axe that they would kill him. It is also stated that on 08.05.2016 at 11.00 A.M., while the 2nd respondent/*de facto* complainant was near the above said house site, the petitioners/ A1 to A3 abused him in filthy language and also threatened that they would file a criminal case against him under Scheduled Castes and Scheduled Tribes Act. The police, after investigation, filed charge sheet against the petitioners/ A1 to A3 for the offences punishable under Sections 447 and 506 read with Section 34 of I.P.C.

Though notice served on the 2nd respondent/*de facto* complainant, none appeared on his behalf. Hence, heard learned Counsel for the petitioners/ A1 to A3, learned Additional Public Prosecutor for the 1st respondent-State and perused the record.

Learned Counsel for the petitioners/ A1 to A3 would submit that the incident occurred on 17.04.2016 and a private complaint was lodged on 17.05.2016, hence, there is a delay of one month in filing the private complaint; that the 2nd respondent/*de facto* complainant neither lodged a complaint before the concerned police nor sent it through registered post to the higher police officer of the District before filing a private complaint, which is contrary to the guidelines of the Apex Court; that the 1st petitioner/ A1 is nothing to do with the above offence as he is working in Railway Department at Hyderabad and residing in Hyderabad only, therefore, the question of his presence

on 17.04.2016 would not arise. It is also submitted that one Palakurthi Saraiah, who is the father of petitioners/ A1 and A2 and husband of the 3rd petitioner/ A3, had entered into an agreement of sale on 14.05.1989 with the father of the 2nd respondent/*de facto* complainant by name Adepu Kumara Swamy. After receiving the entire sale consideration the said Adepu Kumara Swamy also issued a receipt dated, 20.05.1989 and also delivered possession to the said Palakurthi Saraiah; that after delivering possession of the said house plot to Palakurthi Saraiah, the said Adepu Kumara Swamy, expired, without executing a registered sale deed. Since the petitioners/ A2 and A3 are in possession of the said property, the question of their trespassing into the land does not arise. It is further submitted that when the 2nd respondent/*de facto* complainant questioned their possession, the petitioners/ A2 and A3 filed O.S.No.203 of 2006, for grant of permanent injunction against the 2nd respondent/*de facto* complainant and others and vide order, dated 25.04.2016, the learned II Additional Senior Civil Judge, Warangal, ordered status-quo in I.A.No.378 of 2016. It is also submitted that after investigation, the police did not recover any incriminating material i.e., axe as alleged by the 2nd respondent/*de facto* complainant; that the petitioners/ A1 to A3 are innocent and falsely implicated in the said case and there are no specific allegations against them and only omnibus allegations are made against them, therefore, continuation of proceedings against the petitioners/ A1 to A3 is nothing but an abuse of process of law and are liable to be quashed.

Learned Additional Public Prosecutor would submit that after thorough investigation, the police filed charge sheet against the petitioners/ A1 to A3 and there is nothing wrong in it.

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 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

¹ (2009) 7 SCC 495

² (2011) 7 SCC 59

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

³ (2009) 8 SCC 751

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 father of the petitioners/A1 and A2 and husband of the 3rd petitioner/A3 by name Palakurthi Saraiah, had purchased the subject property from the father of the 2nd respondent/*de facto* complainant, through an agreement of sale, dated 14.05.1989 and after receiving the entire sale consideration, the father of the 2nd respondent/*de facto* complainant, delivered possession of the said property to Palakurthi Saraiah. The said Palakurthi Saraiah died in the month of December, 1996 and thereafter, the petitioners/A2 and A3 continued to remain in possession of the said property as the 1st petitioner/A1 is living in different places in view of his avocation.

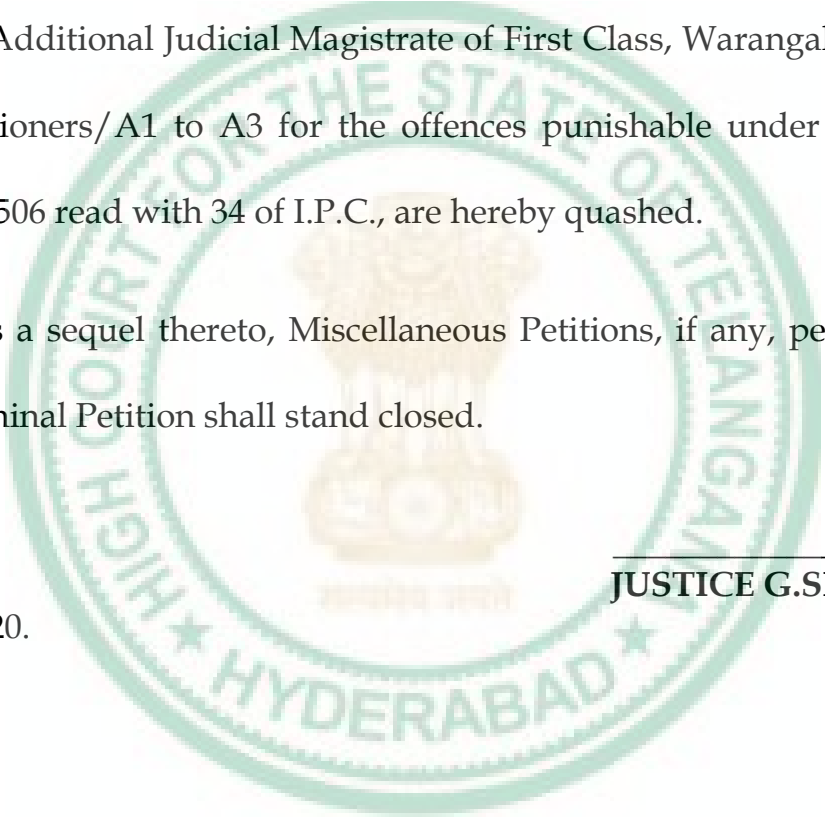
Further, the contents of the charge sheet itself discloses that the petitioners/A2 and A3 filed a suit for grant of perpetual injunction against the 2nd respondent/*de facto* complainant and others and also obtained an ad-interim injunction order. That apart, the petitioners/accused placed on record the receipt and agreement of sale executed by the father of the 2nd respondent/*de facto* complainant. *Prima facie* the matter appears to be civil in nature. Whether the father of the 2nd respondent/*de facto* complainant had executed the agreement of sale or not can be decided by the civil Court as the suit is pending before the civil Court.

Having regard to the principles laid down by the Apex Court in the cases referred to above and in view of the pendency of the Civil Suit between the parties with regard to the same property, I am of the considered view that continuation of criminal proceedings against the petitioners/A1 to A3 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.2 of 2017, pending on the file of the I-Additional Judicial Magistrate of First Class, Warangal, against the petitioners/A1 to A3 for the offences punishable under Sections 447 and 506 read with 34 of I.P.C., are hereby quashed.

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

21.01.2020.
gkv/Gsn

A large, faint, circular watermark seal of the High Court of Andhra Pradesh, Hyderabad, is centered in the background. It features the text 'HIGH COURT OF THE STATE OF ANDHRA PRADESH' around the top and 'HYDERABAD' around the bottom, with a central emblem.
JUSTICE G.SRI DEVI