

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.3602 of 2019

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure by the petitioners-accused Nos.1 to 5 to quash C.C.No.541 of 2016 on the file of learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram, the cognizance of which was taken for the offences under Sections 447, 427, 506 read with Section 34 of the Indian Penal Code.

2. The facts in brief as can be seen from record available before the Court are as under:

a) The respondent No. 2 - *de-facto* complainant has lodged a private complaint under Section 200 of the Code of Criminal Procedure before the learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram alleging that he along with his brother Sudershan Raj Kapoor have purchased land admeasuring Ac.21.24 guntas in Sy.No.21 and Ac.21.04 guntas in Sy.No.22 situated in Porandla village, Maheshwaram Mandal in the year 1984 vide Sale deeds bearing document Nos.1312 and 1313 of 1984 from the original owner Mohd. Ahmed Shareef

through registered GPA Holder by name Mohd. Mahboob Shareef, S/o. Ahmed Shareef by paying sale consideration and since then the respondent No.2 and his brother are jointly in possession and enjoyment of the said property.

b) The respondent No.2 and his brother have developed the said property by obtaining loan from Daccan Grameena Bank, Dubbacherla of Maheshwaram Mandal and installed bore-well, drip irrigation system and fencing to the lands. On 19.06.2014 at 8.30 PM accused No.1 and 13 others have formed into a group, high handedly trespassed into the lands of the respondent No.2 - *de-facto* complainant by possessing deadly weapons, damaged the fencing pillars, bore-wells and drip irrigation system and also committed theft of bore-well. When the watchman of the respondent No.2 objected the illegal activities of the petitioners, they have threatened him with dire consequences. On the information given by the watchman, the *de-facto* complainant and his son and his friend namely G.Muralidhar rushed to the scene of offence, wherein the accused have threatened them with dire consequences by abusing them in most filthy language as “Saale hum thum logoku murder kardethe, hum deklethe kaisa thum log yape kethi karthe” etc. Due to the illegal activities of the accused and

his associates, the *de-facto* complainant incurred a loss of more than Rs.5 lakhs.

d) Learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram has referred the said private complaint to the Maheshwaram Police Station under Section 156 (3) of the Code of Criminal Procedure for further investigation. The Police, Maheshwaram has registered a case in Crime No.212 of 2014 for the offences under Sections 447, 427, 379, 504, 506 read with Section 34 of the Indian Penal Code. After completion of investigation, the Police have filed charge sheet alleging that accused Nos.1 to 5 have committed offences under Sections 447, 427, 420 read with Section 34 of the Indian Penal Code. The charge sheet was taken on file as C.C.No.541 of 2016. Aggrieved by the same, the present criminal petition is filed by the petitioners-accused Nos.1 to 5 to quash C.C.No.541 of 2016 on the file of learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram against them on the following grounds:

i) There are civil disputes between the petitioners and family of the *de-facto* complainant for a long time and number of complaints have been filed against the petitioners by *de-facto*

complainant and his family members i.e., FIR Nos.141 of 2012 and 179/2014 against respondent No.2 and FIR Nos. 213, 221 and 281 of 2014 against the watchmen of the *de-facto* complainants and FIR No.168 of 2014 against the brother of the *de-facto* complainant. FIR No.168 of 2014 is still pending and in all the remaining cases the accused were acquitted. All the complaints are similar in nature, wherein the allegations are that the accused have trespassed into the land in Sy.Nos.21 and 22 to an extent of Ac.42.28 guntas situated at porandla Village of Maheshwaram Mandal, R.R. District.

ii) Though *de-facto* complainant and his brother are alleging that they have purchased an extent of Ac.42.28 guntas in Sy. Nos.21 and 22 from one Mohd.Ahmed Sharif through his GPA Holder Mohd. Ahmed Sharif, the above extent of land belongs to one Khaja Moinuddin. The *de-facto* complainant alleged that Khaja Moinuddin sold the land to Mohd. Ahmed Sharif, who in turn sold the extent of land in favour of the *de-facto* complainant and his brother but the *de-facto* complainant is not able to produce the sale deed between Khaja moinuddin and Mohd. Ahmed Sharif.

iii) The petitioners are the legal heirs of the said Khaja Moinuddin. The *de-facto* complainant and his brother have got executed the alleged sale deeds from Mohd. Ahmed Sharif even though the said Mohd. Ahmed Sharif without having any manner of right and authority sold the said extent of property. The petitioners were in possession of the property and when the *de-facto* complainant and his brother along with their henchmen came to the said property, the complaints were lodged. In fact, the *de-facto* complainant has also filed a suit for injunction vide O.S.No.602 of 2014 but no injunction was granted by the Court, as such, in order to pressurize the petitioners, the criminal complaints have been filed against the petitioners.

iv) Learned XXVI Metropolitan Magistrate at Maheshwaram while acquitting the petitioners in C.C.No.314/2014 in connection with FIR No.141 of 2012 has observed that there are serious disputes with regard to the ownership of land. Similarly in other judgments also the Courts have held that the complaints are initiated only to wreak havoc in the lives of the petitioners and that there is no material to show that the possession of the *de-facto* complainant and his brother over the land in Sy.Nos.21 and 22.

v) The witnesses cited by the prosecution in the charge sheet have earlier filed complaints against the petitioners and the said criminal cases ended in acquittal. There is not even iota of truth in the complaint lodged by respondent No.2. The allegations made in the complaint are not attracting the provisions of the various sections invoked against the petitioners. The Police have acted hand in glove due to various reasons by filing charge sheet against the petitioners.

vi) When the possession of the *de-facto* complainant over the said property is under cloud, there is no question of illegal trespass and therefore, entire complaint has to be quashed.

4. Though notice was served on respondent No.2, there is no representation on behalf of respondent No.2. As seen from the record, learned counsel for the petitioners has filed a memo alleging that respondent No.2 has died recently. Heard Sri E.V.V.S.Ravi Kumar, learned counsel for the petitioners, Sri Jillela Rajeshwar Rao, learned counsel for respondent No.3 and Sri S.Ganesh, learned counsel for the respondent No.1 and perused the record.

5. Now the point for determination is:

“Whether the proceedings against the petitioners-accused Nos.1 to 5 in C.C.No.541 of 2016 on the file of learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram, can be quashed under Section 482 of the Code of Criminal Procedure?

6. According to *de-facto* complainant, the land to an extent Ac.42.28 guntas in Sy.Nos.21 and 22 situated in Porandla village, Maheshwaram Mandal was purchased in the year 1984 vide Sale deeds bearing document Nos.1312 and 1313 of 1984 from the original owner Mohd. Ahmed Shareef through registered GPA Holder by name Mohd. Mahboob Sareef, S/o. Ahmed Shareef by way of valid sale consideration. Subsequent to sale transaction, possession was delivered in favour of the *de-facto* complainant and his brother, pattadar passbooks, title deeds were given and in all the revenue records, their names were entered in the possessor column without any interruption. It is submitted by the *de-facto* complainant that there was a protected tenant over the said extent of land. The original owner and protected tenant have compromised the dispute in O.S.No.210 of 1983 and O.S.No.203 of 1983 before the Civil Court at Ibrahimpatnam, thereby the protected tenant was

evicted from the property by initiating separate proceedings under Section 28 (2) and 19 of A.P. (TA) Act, 1850 by the original pattedar Mohd. Ahmed Shareef in Case No.B8/429/1970 before the Tahsildar, Ibrahimpatnam and the possession was also handed over to the pattedar after conducting a detailed panchanama. It is further alleged that Accused have created bogus and fake documents i.e., Will Deed dated 22.05.1966 alleged to have been executed by one Khaja Moinuddin in favour of Mohd. Sharfuddin antedated i.e., 22.05.1966 and also one Gift Deed dated 27.10.1978 alleged to have been executed by Mohd. Sharfuddin in favour of Vazeer Bee, who is mother of the petitioners herein. Originals of those documents have not seen the light of the day and only Photostat copies of those documents were filed in the Writ Petition No. 15080 of 2014, which was subsequently not pressed after filing of the counter by the *de-facto* complainant. It is further alleged that in the year 2012-2013 basing on the forged documents got entered in collusion with revenue authorities, which is challenged by the *de-facto* complainant.

7. The main ground on which the petitioners seeking quashment of the proceedings against them is that the petitioners are the owners of the property through their mother

Vazeer Bee, who has got properties through Mohd.Sharfuddin, who got the property through Khaza Moinuddin. It is also the case of the petitioners that the person, who has executed sale deed in favour of the *de-facto* complainant has no valid title in respect of schedule of property.

8. The petitioners have also given the details of number of cases pending between the petitioner and *de-facto* complainant. According to the petitioners about six FIRs are registered against the first petitioner and his watchman, out of which five cases ended in acquittal and one case is still pending. By mentioning the details of acquittal of number of cases filed by the *de-facto* complainant and others, it is alleged that in almost all the alleged cases, *de-facto* complainant has taken plea of trespass by the petitioners into the land of the *de-facto* complainant. The petitioners have also filed copies of the judgments in C.C.No.314 of 2014 and C.C.No.467 of 2015, wherein one of the petitioners was charged for various offences including trespass of the land in dispute and they were found not guilty. Basing on the said disposal of criminal cases filed against the petitioners and others, it is submitted vehemently that *de-facto* complainant going on filing false cases against them even though earlier cases were resulted in acquittal by

putting same allegations of trespass by giving different dates and by showing different cause of action and therefore sought for quashing C.C.No.541 of 2016 against the petitioners.

9. On considering rival contentions and on going through the documents including copies of the judgments filed, it is clear that there is serious dispute of the ownership between the parties on one hand and *de-facto* complainant on the other hand. According to the petitioners, the person, who sold the property to the *de-facto* complainant has no valid title and whereas according to the *de-facto* complainant, the petitioner created fake documents with antedate and basing on those documents trying to project that they are the others of the property. Therefore, whether the *de-facto* complainant is the owner by virtue of the sale deeds executed by the predecessors in title or whether the petitioners are having right through their mother in respect of schedule of property are the issues will have to be determined only after full-fledged trial by the trial Court may be in a proper suit for declaration and title. Until, then the cases and counter cases against the petitioners and respondents would continue.

10. So far as the present petition is concerned, it is alleged that the petitioners have trespassed into their land, damaged the same, abused them in filthy language and also cheated them, all the allegations against the petitioners are based on the facts, which the petitioners are disputing. Therefore, as already observed, whether the petitioners are the owners or the *de-facto* complainant is the owner would come to light only after full-fledged trial. Even criminal Court in a preliminary enquiry with regard to the trial, cannot give a finding as to whether the petitioners are owners of the property.

11. In a petition under Section 482 of the Code of Criminal Procedure, it cannot be decided that the *de-facto* complainant is not the owner and that the petitioners are the original owner. Until record is found that the petitioners are not the owners of the property and that the *de-facto* complainant has no right over the same, this court cannot quash the case against the petitioners. Similarly, Sections 427 and 447 of the Indian Penal Code are the offences that are mainly connected with the title of the property. If the *de-facto* complainant is the owner of the said property and if the petitioners are the owners of the said property, then the question of trespass by the petitioners does not arise. Similarly, Sections 506 and 420 of the Indian Penal

Code are also connected to the main issue as to whether the petitioners are the owners or the *de-facto* complainant. Therefore, at this stage, based on the charge sheet, statements of witnesses, it is clear that there is *prima-facie* material against the petitioners. Therefore, the case against the petitioners cannot be summarily quashed.

12. Learned counsel for the petitioners has submitted that the case is purely civil in nature and in support of his contention, relied upon an authority in **Prof. R.K.Vijayasathya and another v. Sudha Seetharam and another**¹, wherein the Honourable Apex Court held as follows:

“24. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent

¹ (2019) 16 supreme Court Cases 739

against the appellants constitutes an abuse of process of court and is liable to be quashed.

13. In **Mitesh Kumar J.Sha v. State of Karnataka and others**² the Honourable Apex Court held as follows:

“41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.⁷, as under :-

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

42. It was also observed:-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is

² 2021 SCC Online SC 976

obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

43. On an earlier occasion, in case of *G. Sagar Suri and Anr. Vs. State of UP and Ors.*⁸, this Court has also observed:-

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

44. Furthermore, in the landmark judgment of *State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.* regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their

face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. The issue involved between the parties is as to who has got a valid title over the property in dispute. It has been specifically mentioned that the petitioners in collusion with revenue officials, more particularly VRO of Porandla Village have created a pahani patrika for the year 2012.13 and got entered the names of the petitioners, even though they have no right. The statements of witnesses from the revenue department like Tahsildar, Deputy Tahsildar, VRO, would go to show that the then VRO in collusion with accused persons has created pahani patrika that the petitioners are in possession of the property, as such, even the then VRO is shown as one of the accused i.e., Accused No.7.

15. Therefore, irrespective of the fact that the civil court will give a finding as to whether the petitioners or the *de-facto* complainant are the owners of the property in dispute, still there is a strong *prima-facie* material in respect of allegations that forgery was done and documents were created. Therefore, it cannot be ruled that there is no *prima-facie* case against the petitioners for the offence under Section 420 of the Indian Penal Code.

16. It is alleged by the prosecution that the accused persons have committed trespass into the land belonging to the *de-facto* complainant, cause damage to the fencing stone pillars, drip irrigation system and when the watchman tried to obstruct them, they threatened him with dire consequences. As discussed above, both the petitioners as well as *de-facto* complainant have been claiming ownership over the property in dispute. In order to ascertain as to who whether the petitioners have trespassed into the land of the *de-facto* complainant, the crucial question to be considered is whether vendors of the *de-facto* complainant or the vendors of the petitioners have got right over the property in dispute. In case, if the *de-facto* complainant and his brother are the owners of the property in dispute as claimed by them and in case if the petitioners have entered into their land without any permission, it can be said that the petitioners have committed the offence under Section 427 of the Indian Penal Code. Therefore, trial Court has to decide as to whether the *de-facto* complainant is the owner of the property and if so, whether the petitioners have trespassed into the said land based on the material available before it.

17. In order to constitute an offence under Section 427 of the Indian Penal Code, the prosecution is expected to place material

before the Court that the petitioners have caused damage to the property belonging to the *de-facto* complainant i.e., fencing stone pillars, drip irrigation system worth of more than Rs.50/-. In order to prove the alleged offence, prosecution is required to lead the evidence.

18. Similarly, in respect of the offence under Section 506 of the Indian Penal code also, it is alleged by the prosecution that the petitioners have threatened them with dire consequences. It is an admitted fact that there are disputes between the petitioner on one hand and *de-facto* complainant on the other hand and number of cases and counter cases have been filed, some of the cases are disposed of and some of the cases are pending. Considering the same, allegations against the petitioners cannot be brushed aside summarily stating that there is no case against the petitioner.

19. The facts, which are alleged by the *de-facto* complainant are disputed by the petitioners. This Court in a petition filed under Section 482 of the Code of Criminal Procedure cannot decide as to which version is correct and which version is incorrect. There are many factual issues involved in the case and those issues have to be dealt by the trial court after full-

fledged trial. Since there is *prima-facie* material against the petitioners, the proceedings against the petitioners in C.C.No.370 of 2016 on the file of learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram, cannot be quashed.

20. Accordingly, the Criminal Petition is dismissed. The trial Court is directed to proceed with the case against the petitioners in C.C.No.370 of 2016 on the file of learned XXVI Metropolitan Magistrate, Ranga Reddy District at Maheshwaram on merits, uninfluenced by the observations and comments made by this Court in this order.

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

Date: 20.10.2022
AS

DR. D.NAGARJUN, J