

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 10471 OF 2022

Between:

1. Gadekarka Venugopal, S/o Late Venkatanna, Aged about 64 years, Occ Business, R/o Plot No.83 and 84, G.V. Colony, Gadwal, Jogulamba Gadwal District

...PETITIONER/ACCUSED

AND

1. The State of Telangana, Rep by its Public Prosecutor, High Court, State of Telangana.
2. The Chief Executive Officer, Telangana State Wakf Board, Hyderabad.

...RESPONDENTS

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the records in connection with CC No.1278 of 2020 on the file of Addl. Judicial Magistrate, Gadwal and quash the same.

I.A. NO: 1 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition the High Court may be pleased to stay of all further proceedings including appearance of the Petitioner in connection with CC No.1278 of 2020 on the file of Addl. Judicial Magistrate, Gadwal.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri CH RAVINDER, Advocate for the Petitioner and the Public Prosecutor (TG) on behalf of the Respondent No.1 and of SC for TSWB for the Respondent No.2

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10471 OF 2022****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner-Accused to quash the proceedings against him in C.C.No.1278 of 2020 on the file of Additional Judicial Magistrate, Gadwal.

2. Heard learned counsel for the petitioner-Accused and learned Additional Public Prosecutor for the respondent – State. Perused the record.
3. The petitioner is questioning the charge sheet filed against him for the offence under Section 52-A of the Wakf Act and also under Sections 447, 427, 153-A, 471 and 420 of IPC.
4. The Chief Executive Officer of Telangana State Wakf Board, Hyderabad who is 2nd respondent filed complaint dated 11.12.2015 before the Station House Officer, Gadwal stating that this petitioner had trespassed illegally and encroached the wakf property in Sy.No.774 and also started illegal construction in the said wakf

property. Aggrieved by the acts of the petitioner the 2nd respondent approached the police and gave a written complaint. On the basis of the complaint, police registered the FIR and filed charge sheet.

5. The learned counsel for the petitioner would submit that a notice was given by the wakf authorities with respect to the very same property on 05.02.2010. The said notice was followed by an eviction notice on 29.06.2010, ordering eviction of the petitioner from the said property and to handover the same to the wakf board. The said eviction order dated 29.06.2010 was questioned before this Court in W.P.No.22044 of 2010. This Court had suspended the said eviction order on 03.09.2010.

6. The above said facts are not disputed by learned counsel for 2nd respondent. However, he submits that though this Court suspended the eviction notice and the writ petition is pending, the criminal complaint is maintainable. The learned counsel also filed detailed counter affidavit in which he alleged that this petitioner was involved in submitting fake no objection certificate dated 21.11.2016. However the said issue is subject matter of another crime registered under Section 52 of Wakf Act.

7. According to Wakf Act if the Board is satisfied, after making any inquiry that any immovable property of a 'Wakf' has been transferred without the previous sanction of the Board which is in contravention of the provisions of Section 51 of Wakf Act, the concerned may send a requisition to the Collector within whose jurisdiction the property is situated to obtain and deliver possession of the property to the Board. On receipt of such requisition, the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of 30 days from the date of the service of the order.

8. Section 52-A(3) of Wakf Act prohibits Court from taking cognizance of an offence under Section 52-A unless the complaint is made in accordance the Section 2-D of Cr.P.C. In the present case, charge sheet is filed by police as such, the trial Court is barred from taking cognizance of the said offence under wakf Act.

9. This Court had already stayed the eviction orders dated 29.06.2010 issued by the board. Pending the writ petition, the present criminal complaint is filed by the board. However, the Board

has not taken any steps to vacate the order of suspension passed by this Court in writ petition. For the reason of the writ petition pending and the eviction order being suspended, the question of the alleged offence of criminal trespass does not arise, when admittedly the petitioner is in possession.

10. The other offences alleged are of cheating under Section 420 of IPC and causing mischief under Section 427 of IPC, no allegation is made in the complaint to attract any of the said offences. There are no allegations of any fraudulent inducement and consequent delivery of property to attract Section 420 of IPC. The question of attracting the offence under Section 153-A of IPC does not arise since there is no allegation of any kind of acts done by this petitioner, to promote enmity between different groups on grounds of religion, race etc and prejudicial to maintenance of harmony.

11. For the above said reasons, the petitioner succeeds and accordingly proceedings against him in C.C.No.1278 of 2020 pending on the file of Additional Judicial Magistrate, Gadwal are hereby quashed.

12. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- K. VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//



SECTION OFFICER

To,

1. The Addl. Judicial Magistrate, Gadwal, T.S
2. The Chief Executive Officer, Telangana State Wakf Board, Hyderabad
3. One CC to SRI. CH RAVINDER Advocate [OPUC]
4. Two CC to the PUBLIC PROSECUTOR TSHC at Hyderabad [OUT]
5. Two CD Copies

AA

DL



HIGH COURT

DATED: 10/02/2023

ORDER

CRLP.No.10471 of 2022



The Criminal Petition is Allowed

⑧ VLV
25/3/23