

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

Criminal Petition No.8956 OF 2015

Between:

B.Vasu

... Petitioner

And

State of Telangana

rep. by its Public Prosecutor

and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.10.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No.8956 of 2015

% Dated 136.10.2022

B.Vasu.

... Petitioner

And

\$ State of Telangana
rep. by its Public Prosecutor
and another.

... Respondents

! Counsel for the Appellant: Sri Bethi Venkateshwarlu

^ Counsel for the Respondents: Public Prosecutor for R1
Sri B.Venkata Raju for R2

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NO. 8956 OF 2015****ORDER:**

1. The petitioner is sole accused seeking quashing of the proceedings in CC NO.91 of 2015 on the file of VIII Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad. The said charge sheet was filed pursuant to a private complaint which was referred to police for investigation on the complaint filed by the 2nd respondent before the VIII Additional Chief Metropolitan Magistrate, Nampally.

2. Briefly, the facts of the case are that the 2nd respondent/complainant stated in his complaint that he is the owner of the property bearing No.16-9-782, Old Malakpet, Hyderabad and he is having five brothers and four sisters. After distribution of the property, the 2nd respondent was given two rooms in the ground floor. As the place was not sufficient, he took another room and residing at that place with his family. However, some household articles were kept in two rooms. On 26.05.2014, when the 2nd respondent went to his house, he found that lock to the said rooms was broken and all his belongings were removed. He also gave details of the missing property. He came to know on

enquiry that the petitioner herein has trespassed into his premises, broke open the locks and committed theft of the property. On the basis of the said complaint, the police registered the case and during the course of investigation, found that the said belongings were removed by the petitioner herein and accordingly prayed the Court to issue summons to the petitioner for conducting trial.

3. Learned counsel for the petitioner submits that the 2nd respondent did not have any right in the said premises. The suit in OS No.4030 of 1997 filed against the 2nd respondent/complainant for mandatory injunction and direction to vacate and handover the physical possession of the suit schedule property on the file of the II Junior Civil Judge, Hyderabad, was dismissed on 31.01.2003. The 2nd respondent/complainant also filed suit in OS No.212 of 1981 for partition earlier, which was dismissed. Against the same, he preferred appeal before the High Court vide CCCA No.32 of 1992, which is pending adjudication.

4. Admittedly, there are disputes amongst the brothers. The petitioner is none other than the 2nd respondent/*defacto* complainant's brother's son. As seen from the complaint, when the 2nd respondent went to the premises, he found that the lock of the premises was broke open and the property was missing. Though he

stated that he made enquiries, no such names of persons, with whom enquires were made are stated in the complaint. The Investigating Officer during the course of investigation found that no witnesses came forward to speak about the alleged offence. Only two witnesses, who are cited other than the 2nd respondent are the daughters of the 2nd respondent.

5. Admittedly, though the description of the property is given, there is no investigation regarding the missing property and no property was recovered. There is no explanation by the Investigating Officer as to what happened to the said property.

6. Admittedly, there are several disputes are pending in between the families of the petitioner and the 2nd respondent. The police did not find any articles allegedly stolen from the premises. In fact, the 2nd respondent has failed to convince that he was in possession of the premises where the alleged theft took place.

7. When the entire evidence is accepted, it is the evidence of the *defacto* complainant/2nd respondent and his two daughters, who alleged that theft of certain property had taken place on the basis of some enquiries. Admittedly, there are not witnesses to the alleged incident and the Investigating Officer also did not find any independent witnesses to the alleged incident of theft. On the basis

of assumptions and suspicion that the articles were subjected to theft by the petitioner, cannot be accepted. The evidence of Defacto complainant and his two daughters is hearsay in nature and there is no corroborating evidence.

8. Even accepting all the facts of the case, the trial Court will not have any evidence to convict the petitioner in the absence of any material that was recovered nor the possession of the 2nd respondent/*defacto* complainant over the subject property, is proved since the matters are pending adjudication before the concerned courts.

9. In the present circumstances of the case, the trial before the concerned court is in futility and wasting Court's time in conducting trial. For the said reason, the petition is allowed and the proceedings against the petitioner in CC No.91 of 2015 on the file of VIII Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally are hereby quashed.

10. Accordingly, the Criminal Petition is allowed.

K.SURENDER, J

Date: 13.10.2022

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.8956 of 2015

Dt.13.10.2022

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