

THE HON'BLE SRI JUSTICE UJJAL BHUYAN

CRIMINAL PETITION Nos.2341 of 2018 & 6561 of 2019

COMMON ORDER:

This order will dispose of both Criminal Petition Nos.2341 of 2018 and 6561 of 2019.

2 Heard Mr.V.Hariharan, learned senior counsel for the petitioner in CrI.P.No.2341 of 2018 and for respondent No.2 in CrI.P.No.6561 of 2019. Also heard Mr.P.Shiv Kumar, learned counsel for respondent No.2 in CrI.P.No.2341 of 2018 and for the petitioner in CrI.P.No.6561 of 2019.

3 At the outset, facts of CrI.P.No.2341 of 2018 may be adverted to.

4 This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) for quashing of charge sheet No.233 of 2017 dated 03.10.2017 in C.C.No.764 of 2017 pending before the Court of XVII Additional Chief Metropolitan Magistrate, Hyderabad.

5 Petitioner – C.M. Ramesh was the Chairman and Managing Director of M/s. Rithwik Projects Limited (respondent No.2 in CrI.P.No.6561 of 2019). However, petitioner resigned from M/s. Rithwik Projects Limited (referred to hereinafter as ‘the company’) in the year 2012. Since his resignation he is totally aloof and has

nothing to do with the affairs of the company. In fact, Registrar of Companies had issued Form No.32 stating that petitioner had retired from the company with effect from 29.02.2012.

6 Petitioner became a Member of Parliament (Rajya Sabha) from the later part of the year 2012.

7 Company is the absolute owner of the house bearing No.8-2-293/82/A/1323/A measuring 1439 sq. yards in road No.67, Jubilee Hills, Hyderabad, having purchased the said property through a registered sale deed dated 30.04.2008. The property is a building surrounded by vacant land. The plot in question was sold by the Jubilee Hills Cooperative House Building Society ('Society' hereinafter) to the predecessors-in-title of the company.

8 Adjacent plot No.1342A measuring 1191 sq. yards in road No.67, Jubilee Hills, Hyderabad, was purchased by late KVS Suryanarayana, husband of the second respondent Smt. Kameswari through a registered sale deed dated 30.07.1985 from the Society. The said plot is towards the eastern side of the plot owned by the company. The two properties are situated opposite to each other and are on either side of road No.67 which is a 50 ft. wide road with a dead end.

9 It is stated that in July, 2017, the company came to know that the second respondent had got executed a document titled as

supplemental – cum – rectification deed dated 02.12.2011 changing the extent of plot No.1342A from 1191 sq. yards to 1266 sq. yards with the connivance of the Society.

10 According to the company, the said document i.e. supplemental – cum – rectification deed is a sham meant to grab a portion of the public road in front and a part of the land belonging to the company.

11 In the meanwhile, 2nd respondent got executed in her favour yet another registered sale deed dated 03.01.2012 for another portion of land measuring 145 sq. yards in the same plot No.1342A again with the connivance of the Society. The sale deed showed an extent of 145 sq. yards towards the northern side of plot No.1342A, overlapping the 50 feet road No.67 in between and plot No.1323A of the company.

12 According to the petitioner, the effect of the two deeds i.e. supplemental – cum – rectification deed dated 02.12.2011 and sale deed dated 03.01.2012 is that the 2nd respondent owns the 50 feet road separating her property from the plot of the company which would mean that the company would not have any ingress or egress from road No.67, Jubilee Hills, Hyderabad.

13 On 11.06.2017 second respondent attempted to start construction on road No.67 which was resisted by the company.

O.S.No.586 of 2017 was immediately instituted by the company on 13.06.2017 before the Court of IV Senior Civil Judge, City Civil Court, Hyderabad, seeking perpetual injunction against the second respondent from occupying the road No.67. Further, when it came to light that Greater Hyderabad Municipal Corporation (GHMC) had changed the layout plan of plot No.1342A at the instance of the second respondent, the company filed W.P.No.19935 of 2017 before this Court. This Court passed an order on 20.06.2017 directing the parties to maintain *status-quo*.

14 In view of the above situation, company filed another civil suit before the Court of VII Junior Civil Judge, City Civil Court, Hyderabad, for a declaration that the above deeds dated 02.12.2011 and 03.01.2012 are fraudulent and hence null and void. The suit has been registered as O.S.No.2402 of 2017 and is said to be pending.

15 According to the petitioner though the dispute is between the company and the second respondent, under the mistaken belief that petitioner is still associated with the company and with a view to intimidate the petitioner, second respondent lodged complaint dated 13.06.2017 before the Jubilee Hills Police Station alleging that the petitioner had threatened her. As per the complaint, petitioner had told her that taking advantage of her husband being an IAS officer, she had illegally constructed a wall

and that the petitioner would go to any extent if the said property was not sold to him.

16 Based on the said complaint, Station House Officer of Jubilee Hills Police Station obtained permission from the XVII Additional Metropolitan Magistrate, Hyderabad and registered the complaint as FIR No.411/2017 dated 14.06.2017 under Section 506 of the Indian Penal Code, 1860 (IPC). It is further stated that police had mechanically filed charge sheet No.233 of 2017 dated 03.10.2017 in C.C.No.764 of 2017 copying down the contents of the complaint of the second respondent verbatim.

17 Aggrieved, the present petition has been filed for quashing of the charge sheet.

18 Criminal Petition No.6561 of 2019 has been filed by Smt. Kameswari (respondent No.2 in CrI.P.No.2341 of 2018) as the petitioner for quashing of C.C.No.5178 of 2019 pending before the XVII Additional Chief Metropolitan Magistrate, Hyderabad, for the offences under Sections 420, 423, 447, 468, 471 and 120-B IPC.

19 Petitioner has stated that she is a senior citizen being 83 years of age and that she hails from a respectable family. In the year 1985 her husband late KVS Suryanarayana, IAS (retired) was allotted a plot of land admeasuring 1550 sq. yards by the Society; as a matter of fact, he was one of the earliest members of the

Society. Since the said plot allotted was not suitable for construction, at the request of petitioner's late husband, he was allotted another plot being plot No.1342A at road No.67. A registered sale deed was executed in this regard by the Society in favour of petitioner's late husband bearing No.1971/1985.

20 Later on it was found that the plot allotted to petitioner's husband was to an extent of 1191 sq. yards. As the area was much less than the earlier plot, husband of the petitioner filed an application before the Deputy Registrar of Cooperative Societies, who referred the matter to an arbitrator. An award was passed by the arbitrator on 28.10.1985 directing the Society to revise the site plan suitably after obtaining approvals from the competent authorities.

21 On 13.03.1990 the site plan of plot No.1342A was revised by the Society for an area of 1434 sq. yards which was still less than the area of the earlier plot i.e. 1550 sq. yards. As the Society did not implement the revised site plan dated 13.03.1990, petitioner's husband and after his demise petitioner herself were forced to complain before the Registrar of Cooperative Societies. Following the same, an additional document was executed being supplemental – cum – rectification deed No.710/2012 for an extent of 1266 sq. yards. Even thereafter also there was still

shortfall of the total land area for which sale deed No.612 of 2012 for an area of 145 sq. yards was registered.

22 It is stated that in the meanwhile, petitioner constructed her residence in plot No.1342A after obtaining permission from GHMC. A common compound wall was erected between the residential property of the petitioner and plot No.1323A. Further, a retaining wall was also erected at the end of road No.67 with due permission of the Society and in agreement with the first owner of plot No.1323A.

23 On 30.04.2008 one Mr.C.M.Ramesh who was the Chairman and Managing Director of respondent No.2 acquired plot No.1323A located on the eastern side of the petitioner's residential property. The property was purchased in the name of respondent No.2. Petitioner has stated that the second respondent is the 5th subsequent purchaser of the said plot No.1323A.

24 It is stated that about two months prior to the death of petitioner's husband in August, 2008, Mr. C.M. Ramesh had approached the petitioner with a proposal to purchase a part of petitioner's land of about 200 sq. yards for *Vasthu* reasons. However, the same was declined by the petitioner. This led Mr.C.M. Ramesh to bore a grudge against the petitioner and he complained to the Society alleging encroachment of his land by

the petitioner and her late husband. Subsequently, Mr.C.M. Ramesh realised his mistake and apologised to the petitioner. He informed the petitioner that respondent No.2 would build a health centre at Plot No.1323A for which an entrance from the north-eastern side of petitioner's residential property was required. After much persuasion petitioner entered into a memorandum of understanding with respondent No.2, represented by Mr.C.M.Ramesh as its Chairman and Managing Director, on 22.01.2011. However, it is stated that respondent No.2 violated the terms of memorandum of understanding for which petitioner cancelled the same on 19.05.2011. On 13.06.2017 after intimating the Society, petitioner started constructing the walls demolished by respondent No.2. At that stage Mr.C.M.Ramesh confronted the petitioner and threatened that he would go to any extent if the petitioner continued to refuse sale of the eastern part of the residential building to him. In his desperation to acquire the eastern part of petitioner's residential property by any means, respondent No.2, at the instigation of Mr.C.M.Ramesh, filed a number of civil suits and writ petition against the petitioner. Basic allegation in the above litigations is that petitioner is encroaching road No.67 as well as the plot of respondent No.2.

25 Referring to the incident on 13.06.2017, petitioner lodged a complaint before the Jubilee Hills Police Station being FIR No.411

dated 14.06.2017 under Section 506 IPC. However, police submitted final report under Section 173 Cr.P.C on 14.02.2018 as C.C.No.5178 of 2019 stating that dispute between the parties relates to land and is civil in nature. However, learned XVII Additional Chief Metropolitan Magistrate, Hyderabad, in SR.No.4065 of 2017 considered the protest petition filed by the second respondent whereafter docket order dated 26.03.2019 was passed holding that a *prima facie* case was made out under Sections 420, 423, 447, 468, 471 and 120(B) IPC against the petitioner and two others. Accordingly the case was registered as C.C.No.5178 of 2019, whereafter notice was issued to the petitioner and two others.

26 It is at that stage that Criminal Petition No.6561 of 2019 came to be instituted. This Court by order dated 18.10.2019 had issued notice and passed an interim order staying all further proceedings in C.C.No.5178 of 2019 against the petitioner.

27 While learned senior counsel for the petitioner in Criminal Petition No.2341 of 2018 submits that lodging of complaint and registration of FIR by the police is not at all justified as the petitioner and respondent No.2 are only embroiled in a civil dispute. This would be evident from the stand taken by respondent No.2 in her counter affidavit before the High Court in W.P.No.19935 of 2017 filed by M/s.Rithwik Projects Limited. In

that writ petition, second respondent herein was respondent No.6. While contesting the writ petition, second respondent has narrated her version of the facts wherefrom it is clearly deducible that petitioner and respondent No.2 are entangled in a private property dispute. In fact, it is the stand of second respondent that petitioner had invoked civil court jurisdiction by filing civil suit. Therefore, petitioner is not entitled to agitate the same issue by filing writ petition.

28 However, on the other hand, learned counsel for the second respondent would justify filing of the complaint leading to registration of FIR No.411 of 2017 before the Jubilee Hills Police Station.

29 Insofar Criminal Petition No.6561 of 2019 is concerned, learned counsel for the petitioner submits that criminal complaint lodged by the second respondent is totally frivolous besides giving a criminal angle to what is essentially a civil dispute. As a matter of fact, on conclusion of investigation, police had come to the conclusion that there is a civil dispute between the parties and filed final report. However, learned Court below in a most mechanical manner, passed the docket order dated 26.03.2019 holding that a *prima facie* case is made out against the petitioner under Sections 420, 423, 447, 468, 471 and 120 (B) IPC. Therefore, impugned order dated 26.03.2019 should be set aside.

This submission of learned counsel for the petitioner is opposed by learned counsel for the second respondent who supports the docket order dated 26.03.2019 passed by the learned Court below.

30 Submissions made by learned counsel for the parties have received the due consideration of the Court.

31 Insofar quashing of FIR and criminal complaint by the High Court exercising power under Section 482 Cr.P.C. is concerned, Supreme Court in **State of Haryana Vs. Bhajanlal**¹ had summed up the principles as under:

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 F.I.R. 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

¹ AIR 1992 SC 604

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.

32 Thus, if a criminal complaint or FIR do not disclose commission of an offence and make out a case against the accused, the High Court would be justified in quashing such complaint or FIR exercising jurisdiction under Section 482 Cr.P.C, though such power should be exercised sparingly and with circumspection.

33 Prior to the above decision, Supreme Court in **Ram Sumer Puri Mahant Vs. State of U.P²** has held that when a civil litigation is pending for property wherein the question of possession is involved and has been agitated, there would hardly be any justification for initiating a parallel criminal proceeding. Multiplicity of litigation is neither in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. In **Indian Oil Corporation Vs. NEPC India Limited³** Supreme Court took notice of the growing tendency to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders

² (1985) 1 SCC 427

³ (2006) 6 SCC 736

/ creditors. Supreme Court further noted that there is also an impression that if a person could somehow be entangled in a criminal prosecution, there is likelihood of imminent settlement. However, such attempt to settle civil disputes and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.

34 Again, in the case of **Mitesh Kumar J. Sha Vs. State of Karnataka**⁴, Supreme Court restated its disapproval in imparting criminal colour to a civil dispute to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

35 Having discussed the relevant case laws, we may now advert to the charge sheet filed by the police being C.C.No.764 of 2017 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad. As per the said charge sheet, petitioner in Criminal Petition No.2341 of 2018 has been charge sheeted under Section 506 IPC. A careful perusal of the charge sheet and the first information lodged by the second respondent on 13.06.2017 would go to show that the charge sheet is nothing but reproduction of the first information. No statement of the petitioner was recorded by the investigating officer under Section

⁴ 2021 SC OnLine SC 976

161 Cr.P.C. Only the statement of respondent No.2 as L.W.1 was recorded and as per call details analysis it was found that petitioner had called respondent No.2 on 13.06.2017 at 19.46.49 hours and talked for about 14 minutes.

36 On the basis of the above, it is difficult to hold that petitioner had criminally intimidated second respondent. Criminal intimidation is defined in Section 503 IPC which says that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation to anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

37 A conjoint reading of the first information and the charge sheet would go to show that there is no ingredient of criminal intimidation as against the petitioner within the meaning of Section 503 IPC punishable under Section 506 IPC to warrant registration of a criminal case against the petitioner.

38 Insofar Criminal Petition No.6561 of 2019 is concerned, though the second respondent lodged a complaint against the petitioner before the XVII Additional Chief Metropolitan

Magistrate, Hyderabad, a perusal of the same would go to show that there is hardly any criminal angle in what was alleged against the petitioner. It is out and out a civil dispute between the parties. As a matter of fact, when the Court referred the complaint to the Jubilee Hills Police Station, the same was registered as Crime No.109/2018 under Sections 420, 423, 431, 447, 468, 471, 474 and 120(B) IPC. After thorough investigation police opined that the dispute between the parties relates to land which is civil in nature. Accordingly, final report was submitted under Section 173 Cr.P.C on 14.02.2018 opining that the case referred is civil in nature and should be treated as such.

39 However, respondent No.2 filed protest petition on the basis of which learned Court below i.e. XVII Additional Chief Metropolitan Magistrate, Hyderabad, issued docket order dated 26.03.2019 holding that there is a *prima facie* case under Sections 420, 423, 447, 468, 471 and 120(B) IPC. Accordingly the case has been registered as C.C.No.5178 of 2019.

40 On due consideration and in the factual backdrop narrated above, learned Court below was not at all justified in passing the docket order dated 26.03.2019. Besides, the docket order does not disclose any application of mind on the part of the Court below as to why the final report submitted by the police was not accepted. That apart, learned Court below failed to take into

consideration the very advanced age of the petitioner, who would now be well past 85 years.

41 Thus, upon thorough consideration of all aspects of the matter and taking an overall view, there is no denying the fact that the two contesting parties are embroiled in a civil dispute. The attempt to give criminal colour to such civil dispute should be discouraged and must be nipped in the bud. Consequently and in the light of the above, the charge sheet No.233 of 2017 submitted by the Jubilee Hills Police Station in C.C.No.764 of 2017 pending before the Court of XVII Additional Chief Metropolitan Magistrate, Hyderabad, is set aside and quashed. So also the docket order dated 26.03.2019 passed by the XVII Additional Chief Metropolitan Magistrate, Hyderabad, registering C.C.No.5178 of 2019 is set aside and quashed.

42 In the result, both the criminal petitions are allowed. Miscellaneous petitions, if any, pending in these two criminal petitions, shall stand closed.

UJJAL BHUYAN, J.

Date: 14.03.2022.
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