

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

\*\*\*\*\*

**Criminal Petition No.7928 OF 2019**

Between:

Ashok Rao Ekbote @ Ashok Ekbote ... Appellant

And

The State of Andhra Pradesh,  
rep. by its Public Prosecutor,  
High Court for the State of A.P,  
Hyderabad & Another ...  
Respondents

DATE OF JUDGMENT PRONOUNCED: 19.10.2022

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- |   |  |        |
|---|--|--------|
| 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. 7928 of 2019

% Dated 19.10.2022

#Ashok Rao Ekbote @ Ashok Ekbote ... Appellant

And

\$The State of Andhra Pradesh,  
rep. by its Public Prosecutor,  
High Court for the State of A.P,  
Hyderabad & Another ... Respondents

! **Counsel for the Appellant:** M.A.K. Mukheed

^ **Counsel for the Respondent:** Public Prosecutor

>HEAD NOTE:

? Cases referred

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION NO. 7928 OF 2019****ORDER:**

1. The petitioner is sole accused questioning the correctness of the charge sheet filed for the offences under Sections 297, 427 and 447 of IPC, which is pending before the II Additional Chief Metropolitan Magistrate at Nampally, Hyderabad vide CC No.473 of 2019.

2. The 2<sup>nd</sup> respondent/*defacto* complainant filed written complaint on 17.09.2018 stating that he is the Inspector at Waqf Board. He along with Executive Officer and Surveyor inspected the premises of the petitioner/accused and found that waqf property which are two graves inside the compound wall of the bungalow which was in occupation of the petitioner, situated at Kachiguda Cross Roads had been dismantled to the level of the ground, for which reason the present complaint was filed. The police, Sultanbazar, on investigation found that there were two graves in the compound wall of the petitioner in 15.6 sq.yards and the same was published in the Gazette on 17.06.1982 at Sl.No.76 page No.89 under the Towliath of Waqf Board. According to the investigation, the State Waqf Board filed representation addressing the officials

of Hyderabad Metro Rail, Metro Rail Bhavan to exempt the waqf property from acquisition and the graves cannot be demolished as per the Sharia Law. It was found that two graves in the compound wall were dismantled, for which reason, offence under Sections 297, 427 and 447 of IPC were made out against the petitioner.

3. Learned counsel for the petitioner submits that the Gazette dated 17.06.1982 whereby the notification was issued does not reflect the house number as 3-3-12/2, Kachiguda X Roads. When the house number is not given, the question of graves being removed and leveled to the ground cannot be accepted. Further, in the settlement Deed dated 16.07.1966, the property given to the petitioner shows the house number as 3-3-11, 12, 12/1 to 12/6 and 13, situated at Quthbiguda, which is different from the house number given by the prosecution. Further, there is no mention of any graves in the said compound, as such, the question of keeping two graves belonging to Muslim community by the petitioner, who belongs to Hindu community does not arise. Learned counsel finally submits that under Section 52(A) of the Waqf Act, 1995 which makes alienation of the Waqf property without sanction of the Board a punishable offence. Further, there is a bar for taking cognizance of any of the offence under Section 52-A unless

authorized by the State Government. In support of his contention, he relied upon the decision of Kerala High Court in the case of **Puthukkodi Abboobacker v. the Sub Inspector of Police, Valanchery Police Station** in WP (C) No.19775 of 2015 (V), dated 14.10.2015.

4. On the other hand, learned Public Prosecutor submits that the case cannot be quashed and all the grounds which are raised by the petitioner can be considered by the trial Court during the course of trial, as such, the petition is liable to be dismissed.

5. The case of the complainant is that the said Waqf property which are two graves were within the compound wall of the petitioner. Except producing the gazette dated 17.06.1982, there is no other evidence such as photos or any plans of the property which reflects that there were two graves, which were existing in the premises that was in possession of this petitioner. The petitioner, admittedly, came into possession of part of the property of his father which was bearing No.3-3-11, 12, 12/1 to 12/6 and 15 at Kachiguda, Hyderabad. The notification stated that two graves were inside the compound of Bungalow of Gopal Rao Ekbote, who is the father of the petitioner in an area of 15.6 sq.yds. It is not shown that if the two graves existed, the said two graves

fell into the portion which was given to the petitioner herein. As already stated, the Gazette notification does not give the municipal numbers where such graves were present.

6. According to the investigation, the Chief Executive Officer of Telangana State Waqf Board filed a representation addressing to Metro Rail Bhavan to exempt Waqf Property from acquisition. When the said area was acquired by the Hyderabad Metro Rail, the question of this petitioner either dismantling the graves or trespassing into the waqf property does not arise. More so in the back ground of there being no specific details of the graves existing in the property of the father of the petitioner.

7. None of the witnesses examined by the police state anything about the graves existing in the property of this petitioner nor that the petitioner had at any point of time removed or leveled the graves. It is assumed by the Complainant that the graves existed in the portion of property given to this Petitioner.

8. Section 297 of IPC makes trespassing into burial places a punishable offence. Likewise, Section 427 of IPC is causing mischief or damage to the property and Section 447 of IPC is punishment for criminal trespass.

9. The entire investigation and the complaint are on the assumption that graves existed in the property, which was divided and given to this petitioner. It is not stated by any of the witnesses as to on which date the alleged act of removing the graves was done. Even according to the investigation, certain land was acquired and the Waqf Board has given a representation to the HMR to exempt the Waqf Property from acquisition. The said acquisition was for road widening. In the representation no specific details are given to even prima facie conclude that the graves were in the compound wall of the house in occupation of this petitioner. There were nine municipal numbers to the property of Late Justice Ekbote and only one portion of it was given to this petitioner who is the son.

10. On the basis of assumptions, the criminal prosecution cannot be allowed to proceed against the accused. Unless there is specific evidence to indicate that graves existed in the property which was given to the petitioner and that this petitioner was complicit in removing those graves. None of the offences of either trespass or mischief are attracted. Further, when the land was acquired by the HMR, the question of petitioner trespassing into the acquired land does not arise. If the land in which the graves existed was acquired

by the HMR, it is for the Waqf Board to seek remedy against HMR and this petitioner cannot be tried for the offences under Sections 297, 427 and 447 of IPC. The other grounds raised by the Counsel are not relevant for adjudication.

11. For the aforementioned reasons, continuation of prosecution against the petitioner is sheer abuse of process of Court and liable to be quashed at the inception itself. Accordingly, the proceedings against the petitioner in CC No.473 of 2019 on the file of II Additional Chief Metropolitan Magistrate at Nampally are hereby quashed.

12. In the result, the Criminal Petition is allowed.

---

**K.SURENDER, J**

Date: 19.10.2022

Note: LR copy to be marked.

B/o.kvs



THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.7928 of 2019

Dt.19.10.2022

kvs



