

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

WRIT PETITION No.12428 OF 2015

ORDER:

1 This writ petition, under Article 226 of the Constitution of India is filed seeking to quash the proceedings in FIR No.686 of 2014 on the file of P.S. Saifabad (transferred to CCS Police Station, Hyderabad and numbered as FIR No.304 of 2014), Hyderabad against the petitioners herein, who are accused Nos.2, 19 and 20.

2 The allegation against the petitioners is that the petitioners in conspiracy with the coparceners of the de-facto complainant and one A.M. Khusro impersonated Syed Ali Mohammad and filed revision petition before the Joint Collector, Ranga Reddy district to claim the agricultural lands admeasuring to an extent of Ac.43-09 guntas in Sy.Nos.634, 635 and 638 of Kapra village, causing wrongful loss to the de facto complainant and his father. The first accused in the case hatched a plan to grab the property i.e. agricultural land to an extent of Ac.43-09 guntas in the above survey numbers and in furtherance of his intention he entered into criminal conspiracy with the other accused and one A.M.Kushroo and all the accused knowing that Syed Ali Mohammad S/o Ahmed Sahab is original pattedar and since 1954 his name is entered in pahanis and knowing the said fact they projected and introduced one A.M.Kushroo S/o Syed Amenuddin as Syed Ali Mohammed @ Syed Ali Mohammad Kushroo in the

proceedings before the MRO. The original pattedar Syed Ali Mohammad S/o Ahmed Sahab was not made as party and the complainant and his father were also not made parties and the two brothers of the complainant's father also were not made parties before the MRO as such they could not object before the MRO, Keesara Mandal, Ranga Reddy District as a result the MRO put the accused Nos.5, 6, 7, and 8 and children of Orla Madhusudhan Reddy in possession of the said lands. Thus, complaining that A.M.Khusroo intentionally impersonated as Syed Ali Mohammad and filed a Revision Petition before the Joint Collector, Ranga Reddy District, vide Proc.No.D5/6310/99 and thereby caused wrongful loss to the complainant by getting the order of the MRO got set aside and wrongful gain to themselves.

3 Mr. N.Naveen Kumar, the learned counsel for the petitioners submit that there was a series of disputes in between the other accused and the unofficial respondents pertaining to the piece of property located at Sy.Nos.634, 635 and 638 of Kapra village. The learned counsel for the petitioners would further submit that the petitioners are arrayed as accused in the registered FIR along with other accused without any application of mind and in a mechanical manner. The said crime has been registered against them on a reference made by the lower Court. The case of the petitioners is that the petitioners are bona fide purchasers vide document

No.2667/2002 dated 24.5.2002. The said dispute between the other accused and the unofficial respondents has reached finality after series of litigations vide proceedings No.D5/6310/99 issued by the Joint Collector, Ranga Reddy District. Thereafter, the subject matter of the schedule of the properties in Sy.Nos.634, 635 and 638 of Kapra village, R.R.District have been transferred in the name of A1 and in the name of his relatives and close associates. Date of such documents are 24.5.2002 and 27.01.2003 and vide registered agreement of sale – cum – GPA in respect of different persons by the A.1. That being the case, based upon a registered AGPA registered in the names of respective persons, upon verification, the petitioners would state that they have purchased the property and got it registered on the file of SRO, vide document No.2667 of 2002 dated 24.5.2002 and having nothing to do with the alleged allegations made by the de facto complainant. The property is situated in Kapra village and the said complaint has been registered before the P.S.Saifabad itself would demonstrate the ill-intention of the de facto complainant and influence of the de facto complainant to have it registered only to harass the petitioners and under the garb of the criminal prosecution the de facto complainant is trying to exert pressure on the petitioners for the reasons best known to them. The learned counsel for the petitioner also would submit that it is also a matter of fact that the said private complaint is filed on 22.8.2014 under Sections 120-B, 419, 465 IPC r/w Section 156 (3) Cr.P.C. which was

referred by the learned Magistrate to police. The learned counsel for the petitioner would submit that the cause of action as agitated by the de facto complainant was that since the Joint Collector's office is located Lakdikapul, therefore, the said complaint was referred by the learned Magistrate to Saifabad police station and whereas the properties are located at Kapra which itself denotes that the de facto complainant has intentionally filed the criminal petition. So far as the knowledge of the crime is concerned the de facto complainant in his own complaint has averred that the said dispute is going on between de facto complainant and other accused for quite a long time and having kept quiet for such a long time the de facto complainant has filed the said complaint after a gap of almost 12 long years, that itself is hit by Section 468 of Cr.P.C and barred by limitation. Moreover having got knowledge of the offence long back it is a million dollar mystery why the de facto complainant filed the complaint in the year 2014 against the petitioners along with other accused. However, the learned counsel for the petitioners submit that so far as the case of the petitioners is concerned, it is nowhere in the record that the petitioners are parties in the civil dispute either before the MRO, RDO or the Joint Collector for that matter and not being made parties before the proceedings before the appropriate civil courts that they implicated themselves in civil proceedings and knowingly well that the petitioners are bona fide purchasers either to extract money or to grab the left over property if any the said complaint has been filed

against the petitioners though they are not liable for the past transactions happened between the de facto complainant and the other accused and that the petitioners are not liable. Hence seeks to allow this petition and would submit that preliminary it is an established fact that the petitioners are no way concerned with the disputes between the de facto complainant and other accused and they have no knowledge about such proceedings and even if the trial is allowed to be continued still, nothing would be elicited as seen from the record that the petitioners are not involved in the alleged offence as the role of the petitioners has come into existence by virtue of purchasing the property as bona fide purchasers. Other than that nothing would come out in the stated crime.

4 On the other hand, Mr. Ramchander Goud, the learned counsel for the de facto complainant would submit that the petitioners are none other than the relatives of the third accused who is the mastermind behind the entire episode of grabbing the property belong to the de facto complainant and his family and by suppressions the said property has been conveyed to the petitioners and that the petitioners being the close relatives of A.3 also got knowledge about the happening of the civil proceedings and the nature of conspiracy to defraud the de facto complainant and A.3 being the AGPA holder of A.1 has got the direct involvement in the stated crime and therefore claiming innocence that they are the bona fide purchasers of the

property shall not in any way absolve the criminal liability on the shoulders of the petitioners. He further submitted that so far as the delay in filing the complaint before the learned court below was nothing intentional. But upon scrutinising the entire case and upon knowing the fact that the de facto complainant was defrauded by all the accused the de facto complainant approached the lower and court and having *prima facie* satisfied with the averments of the complaint the lower court referred the matter to the police under Section 156 (3) Cr.P.C. for investigation and accordingly the police registered the case for the alleged offences and this matter is pending by virtue of the stay granted by this Court and the investigation is not proceeded with and if the investigation is allowed to continue, the truth will come to light and the relief sought for by the petitioners at this stage is premature and if the petitioners cooperate with the police and submit their case before the police, the police would, upon verifying the facts, would file the necessary report before the learned trial Court for taking cognizance either way and hence seeks to dismiss the writ petition.

5 This Court is not concerned with the aspects of the legality of the title pertaining to the schedule of property as the petitioners are already agitating their grievance before the appropriate forums. Now with regard to the issue that arises for determination before this Court in this writ

petition which is filed seeking to quash the proceedings in the registered FIR along with the other accused, this Court, by relying upon the judgment of the Hon'ble Supreme Court **Srinivas Gundluri and Ors. vs. Sepco Electric Power Construction Corporation and Ors**¹ and upon verifying the facts and merits of the writ petition is inclined to grant the relief sought for by the petitioners on two counts. Firstly, the said complaint was filed after lapse of 12 long years which is hit by Section 468 Cr.P.C and barred by limitation and the learned trial Court ought to have verified this aspect before referring the matter to the respondent police and even under Section 156 (3) Cr.P.C. the learned trial Court ought to have recorded reasons before referring the matter to the police as held by the Hon'ble Supreme Court in **Srinivas Gundluri case (1 supra)** wherein the Hon'ble Supreme Court held as follows:

"From the above, it is clear that the Magistrate only ordered investigation under Section 156(3) of the Code. It also shows that the Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not, directed the police officer concerned for investigation under Section 156(3) of the Code. As rightly observed by the learned single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV of the Code. He did not examine the complainant or his witnesses under Section 200 of the Code which is the first step in the procedure prescribed under the said Chapter. The question of taking next step of the procedure envisaged in Section 202 did not arise. As rightly pointed out by Mr. Sundaram, instead of taking cognizance of the offence, the learned Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) of the Code and sent the same along with its annexure for investigation by the police officer concerned under Section 156(3) of the Code. To make it clear and in respect of doubt raised by Mr. Singhvi to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the learned single Judge and Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and,

¹ (2010) 8 SCC 206

therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190(1)(b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the Investigating Officer, hence, by directing the police to file chargesheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has exceeded his power as provided in Sub-section 3 of Section 156."

6 In Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao

Chandrojirao Angre and Ors.² the Hon'ble Supreme Court held as

follows:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

7 Secondly, the learned trial Court ought to have appreciated that the entire allegations made in the complaint pertain to the civil dispute between the de facto complainant and the other accused and the civil proceedings are actively under consideration before the respective civil courts.

8 Except the allegation that the petitioners are close relatives of A.3, no other specific allegation was made against the petitioners. The said allegation itself *per se* shall not invite any criminal prosecution in the absence of any specific allegation without adducing any evidence against

² (1988) 1 SCC 692

the petitioners. Therefore, this Court does not find any substance in the said complaint.

9 Lastly, so far as the petitioners are concerned, they have got into the scene only by virtue of sale deeds which have been executed in their favour upon verification that their vendors are having absolute title as on that date and by the date when the petitioners have become the bona fide purchasers of the property so much of water has flown till the complaint was filed and multiple transactions seem to have taken place. However, the subject matter is pertaining to civil in nature altogether and insofar as the petitioners are concerned and dragging the petitioners into this sort of litigation is nothing but abuse of process of law.

10 Accordingly the writ petition is allowed and the proceedings in FIR No.686 of 2014 on the file of P.S. Saifabad (transferred to CCS Police Station, Hyderabad and numbered as FIR No.304 of 2014), Hyderabad against the petitioners herein / accused Nos.2, 19 and 20 alone are hereby quashed. Miscellaneous petitions if any pending in this writ petition shall stand closed.

E.V.VENUGOPAL, J.

Date: 10.10.2023
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