

THE HONOURABLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO.9594 OF 2016

ORDER:-

This Criminal Petition is filed to quash the proceedings in C.C.No.356 of 2016 on the file of the II Additional Judicial Magistrate of First Class, Kovvur.

2. On 01.07.2016, this Court, while admitting the Criminal Petition, granted interim stay vide order in CrI.P. M.P.No.10376 of 2016, and further permitted the learned counsel for the petitioners to take out personal notice to 2nd respondent. Accordingly, the learned counsel for the petitioners had taken out personal notice and filed proof of service into the Registry. None appears for 2nd respondent though notice was served.

3. A charge sheet has been filed against the petitioners for the offences punishable under Sections 353, 341, 506, 188 read with 149 IPC. The allegations in the charge sheet, in brief, may be stated as follows:

On 07.08.2015, the Special Deputy Collector (L.A.), TLIS Unit-2 of Nallajerla handed over an extent of Ac.94.65 cents vide handed over Certificate in RoC No.69/2012 (LA) to the Irrigation Department, Kovvur for excavation work of leading channel under Chintalapudi Lift Irrigation Scheme situated in Bhimole village. On that, the officials of Irrigation Department informed the same to the Tahsildar,

Gopalapuram. When the channel work started previously, the petitioners/accused and others, who are owners of above lands, caused obstruction, and they did not heed to the words of officials. On that, the Tahsildar and Mandal Executive Magistrate, Gopalapuram promulgated order dated 23.02.2016 in M.C. No.20 of 2016 under Section 144 Cr.P.C. from 24.02.2016 at 6.00 AM and also directed the Station House Officer, Gopalapuram to take all precautionary measures to maintain law and order situation and peaceful digging of Chintalapudi canal in Bhimole village.

On 26.02.2016 at about 11.00 AM, when the complainant along with other officials of Irrigation Department and Revenue Department started the above channel work near the fields of A.2 at the outskirts of Bhimole village, the petitioners/accused formed themselves into an unlawful assembly, caused obstructions to the channel work, assaulted the complainant and other public servants to deter from discharge of their duties, restrained them, threatened them with dire consequences and caused disobedience to the order duly promulgated by the Tahsildar and Mandal Executive Magistrate under Section 144 Cr.P.C. dated 23.02.2016.

On the report lodged by the complainant, a case in crime No.28 of 2016 of Gopalapuram police station was registered for the offences punishable under Sections 353, 341, 506, 188 read with 149 IPC, and on completion of

investigation, charge sheet has been laid against the petitioners/accused.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the State.

5. Learned counsel for the petitioners contends that the petitioners and others filed Writ Petition No.28641 of 2015 before this court praying to declare the action of the respondent-authorities in passing Award No.2 of 2015 in RoC No.69 of 2012, dated 02.06.2015, as arbitrary, illegal, null and void and contrary to the provisions of the Act 30 of 2013 and violative of Fundamental Rights apart from Article 300A of the Constitution of India and to quash the same, including the land acquisition proceedings vide Section 4 (1) Notification dated 26.11.2012 and Section 6 declaration dated 31.05.2013 initiated for Chinthalapudi Lift Irrigation Scheme Excavation of leading channel, Bhimolu Village, Gopalapuram Mandal, West Godavari District admeasuring Ac.94.65 cents belonging them as the same is arbitrary, illegal, null and void and in violation of provisions of the Act 30 of 2013, and in the said Writ Petition, this Court, on 04.09.2015, passed an order not to dispossess the petitioners for a period of four weeks, if they are not dispossessed as on the said date, and the said order was extended pending further orders and the same is subsisting till today. It is his further submission that as per order dated 03.03.2016 in W.P.M.P.No.8448 of 2016 in the

above Writ Petition, this Court stayed the proceedings pursuant to the order dated 23.2.2016 in M.C.No.20 of 2016 passed by the Tahsildar. According to the learned counsel for the petitioners, by all means, the petitioners are in possession of the subject land even till today, but, inspite of subsistence of the interim direction passed by this Court, 2nd respondent and other officials trespassed into the land of the petitioners and when the order copy was produced before the officials, it is stated that the order copy was torn and they tried to make constructions in the said land. It is further contended by the learned counsel that there is no assault committed by the petitioners against the complainant or any of the public servants while they were discharging their official duties, and hence, he prayed to quash the impugned proceedings.

6. On the other hand, the learned Additional Public Prosecutor appearing for the State contended that the allegations in the charge sheet make out a *prima facie* case for the offences alleged and hence there are no grounds to quash the impugned proceedings.

7. Perused the recitals in the First Information Report and the statements of witnesses, which form integral part of the charge sheet.

8. There cannot be any dispute that inherent powers under Section 482 Cr.P.C. can be exercised to prevent abuse

of process of Court or to give effect to any order under the Code or to secure the ends of justice.

9. A reading of the recitals in the First Information Report and the statements recorded under Section 161 Cr.P.C. shows that there is absolutely no averment that the complainant and other public servants were assaulted or restrained from carrying on their work. A perusal of the said material further shows that the petitioners only stopped them, and beyond that, there is absolutely no averment, as stated in the charge sheet, that the complainant and other public servants were assaulted or restrained from discharging their official duties. It is surprising for the Court to ascertain as to how such statement has come in the charge sheet, in the absence of any such averment either in the First Information Report or in the statements recorded under Section 161 Cr.P.C. of the complainant. In view of the same, this Court feels that the said statement is clearly an improvement that has come up in the charge sheet, without there being any supporting material. Admittedly, the petitioners are in possession of the subject land.

10. It is submitted by the learned counsel for the petitioners that on coming to know that 2nd respondent and other officials trespassed into the land, the petitioners also filed Contempt Case as against them. The allegation mentioned in the charge sheet that the complainant and

other public servants were assaulted and restrained from discharging their official duties, is absolutely an improvement for the reason that the same does not find place either in the First Information Report or in the statement of the complainant recorded under Section 161 Cr.P.C. In view of the same, this Court is of the opinion that it would be a futile exercise even if the matter is put to trial.

11. For the foregoing reasons, continuation of impugned proceedings against the petitioners would amount to abuse of process of the Court and hence, the proceedings are liable to be quashed.

12. Accordingly, the Criminal Petition is allowed, quashing the proceedings in C.C.No.356 of 2016 on the file of the II Additional Judicial Magistrate of First Class, Kovvur.

Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

JUSTICE K. SREENIVASA REDDY

.02.2022.
DRK

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