
(2012) 10 AP CK 0126
In the Andhra Pradesh High Court
Case No : Criminal P No. 9388 of 2010

Doddapaneni Umamaheswar Rao and Others APPELLANT
Vs
Navuru Gopal Reddy and Another RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 147, 148, 188, 427, 447

Citation : (2013) 1 ALD(Cri) 353

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : V. Surendra Reddy, for the Appellant; A. Bala Bharathi for the Respondent No. 1 and Additional Public Prosecutor for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This criminal petition is filed u/s 482 of the Code of Criminal Procedure to quash the proceedings in CC No. 172 of 2010 on the file of the Court of Additional Judicial Magistrate of First Class, Kovvur, Nellore District. Heard Sri V. Surendra Reddy, the learned Counsel appearing for the petitioners-A1 to A5, Smt. A. Bala Bharathi, the learned Counsel appearing for the first respondent-de facto complainant and the learned Additional Public Prosecutor representing the first respondent-State.

2. The brief facts of the case, which is sought to be quashed are the following:

The de facto complainant instituted Original Suit No. 174 of 2009 on the file of the Court of Principal Junior Civil Judge, Kovvur for permanent injunction restraining the petitioners 1 and 2 (A1 and A2) and their men from interfering with his peaceful possession and enjoyment of the plaint schedule property. In IA No. 841 of 2009 the learned Junior Civil Judge granted interim injunction ax parte in favour of the first respondent-de facto complainant and against the petitioners on 26.11.2009. Alleging that all the petitioners have high-handedly

trespassed into an extent of Ac. 1-00 in the plaint schedule land, had dug pits on the eastern side of the land with the help of proclaimers and caused damage to the land to the tune of Rs. 10,000/-, the de facto complainant lodged the report with the police. As the police did not take any action, the second respondent/de facto complainant filed a private complaint before the Judicial Magistrate of First Class, Kovvur on 25.2.2010.

The learned Magistrate posted the matter on 1.4.2010 heard the complainant, took cognizance of the offence against the petitioners under Sections 147, 148, 447, 427, 188 IPC and issued summons to them in CC No, 172 of 2010. Now the said case is sought to be quashed in the present criminal petition.

3. The learned Principal Junior Civil Judge after making inquiry into IA No. 841 of 2009 in OS No. 174 of 2009 disposed of the same on merits by dismissing the same by order dated 23,4,2010. The learned Junior Civil Judge inter alia observed that the first respondent-de facto complainant not only failed to prove that the total extent of Acs. 282-44 cents was divided into blocks and the land purchased by him under Ex. P1 is a portion of land in the "U" block and also failed to prove that there was a re-survey and that in the said re-survey the plaint schedule land was allotted in Survey Nos. 67/P and 66/2 and thus according to the learned Junior Civil Judge, the first respondent could not be able to establish the identity of the subject-matter of the suit.

4. The question arises for consideration in the present criminal petition is whether criminal prosecution is maintainable against the petitioners-A1 to A5 in the facts and circumstances of the case ?

5. In the first place it requires to be noticed that the learned Magistrate without recording the sworn statement of the first respondent-de facto complainant issued summons to the accused. Therefore, the cognizance is bad for not following the provisions of Section 200 Cr.PC. As regards, the dismissal of the injunction petition, the learned Counsel appearing for the first respondents-de facto complainant would submit that against the order passed by the Junior Civil Judge, CMA was preferred and the same is pending. Therefore, according to him the dismissal of the injunction petition by the Junior Civil Judge has no bearing on the complaint and the offences which the learned Magistrate took cognizance of have to be tried.

6. On the other hand, the learned Counsel appearing for the petitioners-A1 to A5 would contend that the dispute is purely a civil nature and the criminal prosecution is not maintainable and the remedy available for the first respondent-de facto complainant is in the civil suit filed by him and he cannot have recourse to the criminal proceedings.

7. In support of his contention, the learned Counsel relied on a decision in V.Y. Jose and Another Vs. State of Gujarat and Another, wherein the Supreme Court held as follows:

The matter which essentially involves dispute of civil nature should not be allowed to become subject-matter of criminal proceedings which may be resorted to as a short cut to execution of a non-existent decree". Complaint filed making allegations of cheating against the appellants whereas the case in fact involved civil dispute relating to a contract. In such event the High Court ought to have exercised its power u/s 482 Cr.PC.

8. Turning to the facts of the present case, the first respondent-de facto complainant filed a suit for injunction in respect of the land and obtained ad-interim injunction ex parte in IA No. 841 of 2009 filed by him in OS No. 174 of 2009. He filed a criminal case alleging that the petitioners had dug pits in the plaint schedule land with the help of proclaimers and caused damage to a tune of Rs. 10,000/-. It is true that a civil dispute may also give rise to a criminal offence in certain cases, but when the dispute between the parties is purely of a civil nature, the parties shall not resort to launch criminal prosecution against the other. The remedy open to the parties when the dispute between them is essentially of a civil nature is to pursue their remedies before the civil Court in which the civil suit is pending. When the dispute is of purely civil nature, if a party drags his opponent into criminal litigation, it is nothing but abuse of process of Court. Such criminal prosecution is allowed to continue, it will result in miscarriage of justice as it causes undue hardship to the opponent to face frivolous criminal litigation. When the Court comes to the conclusion that the act complained of essentially involves only a civil dispute and violation of the order passed by the Court in the suit between the parties can be redressed by a civil remedy, it shall not encourage criminal litigation. In the instant case, even if the entire version of the first respondent-de facto complainant is considered to be true, his remedy is only in a civil Court by way of making appropriate application against the petitioners-A1 to A5 for breach of orders of injunction passed by the civil Court i.e., before Junior Civil Judge, Kovvur in IA No. 841 of 2009 in OS No. 174 of 2009. Resorting to file criminal cases parallel to the civil proceedings is prohibited in law and the Court shall not encourage such a course. In the facts and circumstances of the present case, I am of the considered view that it is impermissible for the first respondent-de facto complainant to institute criminal proceedings against the petitioners-A1 to A5 in a case of this nature unless this Court in exercise of its powers u/s 482 Cr.PC quash the criminal proceedings it would result in miscarriage of justice. For the foregoing reasons, the entire proceedings in CC No. 174 of 2010 on the file of the Court of Additional Judicial Magistrate of First Class, Kovvur, Nellore District, are quashed. The criminal petition is accordingly allowed.