
(2014) 02 AP CK 0059

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 12866 of 2010

Fayaz Ahmed @ Hasan and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 427, 447, 454, 506

Citation : (2014) 2 ALT(Cri) 192

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Sharad Sanghi, Advocate for the Appellant; M.A. Hameed for respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—These two criminal petitions are filed to quash the proceedings in C.C. Nos. 61 and 984 of 2010 on the file of the Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad, for the offences punishable under Sections 454, 427 and 506 I.P.C. read with Section 34 I.P.C.

2. Criminal Petition No. 12866 of 2010 is filed by Accused Nos. 7 to 10, whereas Criminal Petition No. 12867 of 2010 is filed by Accused Nos. 1 to 6 in Crime No. 31 of 2007 of Falaknuma Police Station, Hyderabad. C.C. No. 61 of 2010 is a case which was split up from C.C. No. 984 of 2010, since Accused Nos. 7 to 10 are minors. Both these C.Cs. virtually relate to one and the same case.

3. I have heard Sri Shard Sanghi, learned counsel for the petitioners/Accused Nos. 1 to 10 as well as Sri M.A. Hameed, learned counsel appearing for respondent No. 2/defacto-complainant and the learned Public Prosecutor representing the State.

4. The dispute between the parties is in respect of a house property in an extent of 600 square yards situated at Jangammet, Falaknuma, Hyderabad. The defacto-complainant claims to have purchased the said property from one Sri J. Chinna

Bal Reddy under a Notarised Agreement of Sale, whereas the petitioners/Accused Nos. 1 to 10 claim to have purchased the property from one Sri J. Balvanth Reddy, who is no other than the son of Sri J. Chinna Bal Reddy. It is alleged in the charge sheet that the defacto-complainant has been in possession of the property since the date of her purchase and the accused on 22.2.2007 at 12-00 Noon broke the locks of her house, took possession of the same and threatened the defacto-complainant and her family members not to come near the house. Alleging as above, she lodged a report with the Station House Officer, Falaknuma Police Station, Hyderabad. Basing on the said report, a case in Crime No. 31 of 2007 was registered. The police after completing the investigation, filed charge sheet.

5. Earlier to this, basing on the report lodged by the Sub-Inspector of Police, Falaknuma Police Station, a case in Crime No. 248 of 2006 was registered u/s 447 I.P.C. and a charge sheet was filed. The said case was tried as C.C. No. 1066 of 2009. The said dispute was in respect of the same property. Learned counsel appearing for the defacto-complainant submits that this is in respect of the part of the property. In any event, the police filed the said case suo-motu alleging that the petitioners criminally trespassed into the property, which belongs to the Government. The petitioners were tried for the said offence and were acquitted by the judgment dated 18.7.2011 holding that the prosecution failed to establish the guilt of the accused.

6. Learned counsel appearing for the petitioners/ Accused filed the deposition of the defacto-complainant - Smt. Siddiqua Begum, who was examined as P.W.5 in C.C. No. 1066 of 2009. In her deposition, P.W.5 stated that she does not know anything about the case, she was not examined by the police and that she also does not know the accused.

7. Learned counsel appearing for the defacto-complainant, however, submits that the said case relates to part of the property in dispute, but not the property relating to C.C. No. 984 of 2010.

8. The counter affidavit filed by respondent No. 2/defacto-complainant shows that she filed O.S. No. 6314 of 2010 in the Court of the VIII Junior Civil Judge, City Civil Court, Hyderabad, in respect of the said property. While the suit was pending, Mr. J. Balvanth Reddy subjected her to intimidation and compelled her to withdraw the suit as she was made to report before the Court that the parties settled the matter out of the Court. It is further stated in the counter affidavit that the said Balvanth Reddy forced her to enter into an agreement with the Accused No. 1 - Ameer Ahmed @ Jahangir Pasha and she was succumbed to intimidation and coercion caused by Sri J. Balvanth Reddy and withdrew the suit entering into an agreement with Accused No. 1 foregoing part of the property. It is her version that despite the said fact, the petitioners/Accused trespassed into the remaining property where she has been residing.

9. The contention of the petitioners/Accused in this case is that they purchased

the subject property from Sri J. Balvanth Reddy under a Notarised Agreement of Sale and they have been in possession of the same and it is the defacto-complainant who has been interfering with their possession with the connivance of the police. Thus, both the parties have been asserting their rights in the subject property. If really the defacto-complainant was made to withdraw the suit under the threat and coercion caused by Sri J. Balvanth Reddy, on that ground she ought to have filed a petition to set aside the compromise decree passed by the Court. But she did not do so.

10. From the facts of the case, it appears that both the parties are claiming rights in the subject property, one alleging against other of trespassing into the property by illegal means. Under law, if an entry into the property in possession of the other is made in exercise of the claim of bonafide right, it does not amount to criminal trespass. In this case, from the facts, which have been narrated hereinabove, it is obvious that there is scramble for possession between the parties by asserting their rights in the subject property. When there is a scramble for possession between the parties, the course open to them is to redress the remedies by approaching the Civil Court. The rights of the parties, such as title and possession, cannot be adjudicated in criminal proceedings. When there is a bonafide dispute between the parties in relation to the rights in the property, including that of possession, resorting to criminal proceedings is nothing but abuse of process of law.

11. In the face of the allegations mentioned in the charge sheet, it is not possible to hold prima-facie that the petitioners/Accused Nos. 1 to 10 criminally trespassed into the property in possession of the defacto-complainant. The defacto-complainant, in the circumstances of the present case, has to initiate civil action against the accused to establish her rights over the property, including that of possession, but resorting to criminal proceedings is not appropriate.

12. Therefore, the entire proceedings in C.C. Nos. 61 and 984 of 2010 on the file of the Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad initiated against the petitioners/Accused Nos. 1 to 10 are quashed.

13. Accordingly, these criminal petitions are allowed. The miscellaneous petitions pending, if any, shall stand closed.