

Sri.K. Srinivasulu vs The State Of Telangana on 13 September, 2024

THE HONOURABLE SMT. JUSTICE K. SUJANA

CRIMINAL PETITION Nos.10280 and 10481 of 2024

COMMON ORDER:

Since the issue involved in both the criminal petitions is one and the same, they are being heard and disposed of together by way of this common order.

2. These Criminal Petitions are filed under Section 528 Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS') to quash the proceedings against the petitioners/accused Nos.2 and 3, respectively, in Crime No.41 of 2024 of Economic Offences Wing, Cyberabad Police Station, Cyberabad Commissionerate, registered for the offences punishable under Sections 59, 198, 201, 316(5), 329 (3), 49, 61(2) read with 3(5) of Bharatiya Nyaya Sanhita (for short 'BNS').

3. The brief facts of the cases are that respondent No.2 i.e., A.V. Rangnath, Commissioner of Hyderabad Disaster Response and Asset Protection Authority, Telangana (hereinafter referred as 'HYDRAA'), lodged a complaint against the petitioners and other accused stating that they encouraged and made illegal constructions in Sy.No.134, SKS,J CrI.P.Nos.10280 & 10481 of 2024 Buffer Zone of Errakunta Pond, Pragathi Nagar (ID 2800/e/17), under Nizampet municipality jurisdiction. It is further stated that a detailed report was submitted by the HYDRAA regarding the said illegal constructions in the above mentioned survey number and found that there were significant violations.

4. As per the findings of HYDRAA, the extent of Errakunta Pond is admeasuring Ac.3.033 guntas. The reports from the Executive Engineer, I&CADD, and the Assistant Director of Survey and Land Records confirm that the land in question is a Government property and that the investigation done by the HYDRAA reveals that the permissions were granted based on incorrect geo-co-ordinates, that placed the said constructions 75 meters away from the actual location of the pond. It is alleged that the Assistant Director of Survey and Land Records did not provide adequate documentation for the investigation and was partial to the encroachers by altering the geo co-ordinates. It is further alleged that the subject matter was brought to this Court by way of filing a petition and the same was allowed permitting to proceed with the construction subject to the condition that it would not SKS,J CrI.P.Nos.10280 & 10481 of 2024 interfere with the identification of FTL/Buffer Zone and by following due process.

5. It is the specific allegation that the Municipal Commissioner of Nizampet Municipality issued building permissions without proper procedure and failed to act on timely reminders issued by the Metropolitan Commissioner, HMDA, insisting to revoke the permissions granted. In the set of said

circumstances, on 15.08.2024 the HYDRAA demolished the illegal constructions. Basing on the said complaint, the Police registered a case in Crime No.41 of 2024 for the offences punishable under Sections 59, 198, 201, 316(5), 329 (3), 49, 61(2) read with 3(5) of BNS. Aggrieved by the same, the criminal petition No.10481 of 2024 was filed by accused No.2 and Cr.P.No.10280 of 2024 was filed by accused No.3.

6. Heard Sri T. Srikanth Reddy, learned counsel appearing on behalf of the petitioner/accused No.3 in Crl.P.No.10280 of 2024 as well as Sri T. Srujan Kumar Reddy, learned counsel appearing on behalf of the petitioner/accused No.2 in Crl.P.No.10481 of 2024 and Sri M. Ramachander Reddy, SKS,J Crl.P.Nos.10280 & 10481 of 2024 learned Additional Public Prosecutor appearing on behalf of the respondents.

7. Learned counsel for the petitioner/accused No.2 submitted that when petitioner/accused No.2 has joined as MRO, Bachupally Mandal in the month of August 2023, the first building permission was already granted in favour of Sri Venkatesh by HMDA on 19.06.2020, vide application No.029273/MED/R1/U6/HMDA/17102019 for construction of 1 Stilt + 5 upper floors to an extent of 606.72 square meters in Plot Nos.1191, 1192, 1993 situated in Sy.Nos.48 and 49 of Bachupally Municipal Corporation. Thereafter, when the petitioner/accused No.2 has assumed his office, on 13.09.2023 the building permissions related to second building were granted to Mrs.MAPS INFRA, vide application Nos.008370 / B P / H M D A / 1831 / M E D / 2023 and 008371/BP/HMDA/1832/MED/2023 by the Nizampet Municipal Corporation for construction of 1 stilt + 5 upper floors to an extent of 498.37 square meters in Plot Nos.1189P, 1190, 1191, 1192P situated in Sy.Nos.48 and 49 of Bachupally Municipal Corporation and for construction of 1 stilt + 5 upper floors to an extent of 394.64 square meters in SKS,J Crl.P.Nos.10280 & 10481 of 2024 Plot No.1192 PART situated in Sy.Nos.48 and 49 of Bachupally Municipal Corporation, respectively.

8. Learned counsel for the petitioner/accused No.2 submitted that on receipt of first application made by the developer vide application dated 14.09.2023 seeking to provide revenue sketch with regard to plot Nos.1188, 1189, 1190, 1191, 1192 and 1193, the Mandal Surveyor, Bachupally conducted survey in Sy.No.49 for demarcating the plots by sketch map No.E/409/2023 and the same was attested by the petitioner/accused No.2. Thereafter, an Article was published in the local newspaper stating that mishap was played in demarcating the plots surround Errakunta Pond. On such publication, the petitioner/accused No.2 has taken action and directed the Mandal Giridhavar, Bachupally Mandal to take immediate action against the illegal encroachers in Sy.No.134 situated at Errakunta Pond and further directed to demarcate the Survey numbers in FTL/Buffer Zone and also to stop further encroachment into the subject lands. The Mandal Giridhavar submitted his report dated 08.01.2024 along with photographs depicting the action taken against the alleged illegal encroachers.

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9. Learned counsel for the petitioner asserted that the petitioner/accused No.2 addressed letter dated 11.01.2024 to RDO Malkajgiri Division and Assistant Director Survey and Land Records, Medchal Malkajgiri District, requesting them to demarcate land in Sy.no.134 of Bachupally Village

and to re- verify the Government Land and to fix the boundaries. Thereafter, on 12.06.2024 the Assistant Director, Survey and Land Records, Medchal-Malkajgiri District addressed letter to the District Collector, Medchal-Malkajgiri stating that the Deputy Inspector had conducted survey to an extent of Ac.03.00 guntas in Sy.No.134 and requested the District Collector to direct the petitioner/accused No.2 for fixing the fence in the subject land. He further submitted that on the directions of the District Collector, the petitioner/accused No.2 addressed letter vide Lr.No.B/15/2024 dated 22.08.2024 to Municipal Commissioner of Nizampet to fix the fence to protect valuable Government Land.

10. In addition to the above, it is also stated that the petitioner/accused No.2 addressed letter dated 30.08.2024 to the District Collector brining all the aspects to his notice and even the aspect of filing of Writ Petition No.1274 of 2024 by SKS,J CrI.P.Nos.10280 & 10481 of 2024 M/s Maps Infra whereunder, order dated 11.01.2024 was passed directing not to interfere with the property of petitioner i.e., M/s. Maps Infra. It is conclusively submitted by learned counsel for the petitioner/accused No.2 that even though the petitioner/accused No.2 initiated his optimum string of efforts to protect the Government Land from illegal encroachment, he has been falsely implicated in this criminal case on the basis of vague and baseless allegations and even if the same are taken in their entirety, no offence as alleged against the petitioner would attract. Therefore, prayed this Court to allow the CrI.P.No.10481 of 2024 quashing the proceedings initiated against the petitioner/accused No.2.

11. Learned counsel for petitioner/accused No.3 submitted that the only allegation against the petitioner/accused No.3 is that he mentioned the subject lands as private lands instead of Government lands in collusion with the petitioner/accused No.2. He further submitted that the said word 'private land' was occurred due to typographical mistake as the manuscript signed by the petitioner/accused No.2 refers to the said land as prime land and later, the same was corrected and that a perusal of the letter dated 23.03.2024 specifically SKS,J CrI.P.Nos.10280 & 10481 of 2024 demonstrates that the subject survey number is a Government Land and the word occurred as private is only an inadvertent typo mistake which cannot be treated as a crime with intention. In fact, when the mistake was found vide Lr.Rc.No.A1/78/2024 dated 12.06.2024 a corrigendum letter has been issued. Therefore, there are no specific allegations against the petitioner/accused No.3 in commission of offences as alleged against him. Therefore, it is unfair to compel the petitioner/accused No.3 to undergo the rigmarole of a criminal trial in the absence of missing of the offence in the complaint. Hence, he prayed the Court to quash the proceedings against the petitioner/accused No.3.

12. Per contra, learned Additional Public Prosecutor vehemently opposed the submissions made by the learned counsel for the petitioners and filed counter stating that the petitioner/accused No.2 falsely represented land boundaries on a sketch map without verification; issued an unauthorized attested sketch map; colluded with other accused to help encroachers to obtain permissions on government land and failed to protect government lands and assets, despite being responsible for doing so. In essence, the petitioner/accused SKS,J CrI.P.Nos.10280 & 10481 of 2024 No.2 was actively involved in fraudulent activities related to land boundaries and permissions, and should be held accountable.

13. Learned Additional Public Prosecutor submitted that the attested sketch by the petitioner/accused No.2 enabled third parties to misrepresent and obtain permission on Government land (part of Errakunta Tank) for which they are responsible. Their deliberate actions led to the misidentification of Government land and construction of illegal structures on Government land beyond the allowed buffer zone and full tank level, facilitated by willful representation and incorrect survey numbers.

14. The Additional Public Prosecutor argued that the petitioner/accused No.2, who holds a responsible designation, failed to attend a crucial joint inspection to demarcate land in Sy.No.134 and despite this the Revenue Inspector proceeded with the survey and formalities without the presence of petitioner/accused No.2, which amounts to deliberate omission. Moreover, the learned Additional Public Prosecutor pointed out that the co-ordinates of the land available in official records, were not included in the Panchanama report SKS,J CrI.P.Nos.10280 & 10481 of 2024 and that this omission was not brought to the attention of the District Collector when submitting the report.

15. The learned Additional Public Prosecutor further argued that despite issuance of orders by this Court directing to use recorded coordinates for demarcation, the same was not mentioned in the panchanama report and was not even used for physical demarcation. As a result of which, valuable Government land was incorrectly demarcated, allowing third- party encroachment, which moves contrary to proper procedures overseen by the court.

16. It is submitted that in 2020-2022, the Tahsildar and revenue officials opposed construction on the subject land, leading to demolition of unauthorized structures. Despite this, the accused failed to pay attention for the Government land, which is well-documented in Revenue records. The petitioner/accused No.2 as a senior public servant, holds significant influence and power, posing a substantial risk of evidence tampering, particularly land records and survey documents, which are yet to be fully collected.

17. The petitioner/accused No.3 made contradictory statements in three letters to the District Collector:

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1. 19.03.2024 (File No.Rc.No.A1/78/ 2024):

Described Survey No.134 as "prime land" (unofficial term), raising concerns as it's government-owned Full Tank Level (FTL) land. (Letter not available at District Collectorate Office).

2. 23.03.2024 (File No.Rc.No.A1/78/2024):

Referred to Sy.No.134 as "private land", contradicting the earlier statement. The original letter at the District Collector's office still says "private land", while the copy

submitted to Court was altered to "prime land".

3. 12.06.2024 (File No.Rc.No.A1/78/2024):

Reverted to "prime land (government
land)", adding "government land" in
handwriting. This belated admission,

made after public scrutiny, suggests an attempt to cover up previous contradictory statements and avoid accountability."

18. The petitioner/accused No.3 is alleged to have facilitated illegal constructions on Government land (Sy.No.134) until HYDRABAD demolished them on 10.08.2024 and on 11.08.2024 and that criminal trust of breach and conspired to defraud the government and submitted three contradictory letters to the District Collector, falsely classifying Government land as private property, without mentioning the illegal structures and that engaged in SKS,J Crl.P.Nos.10280 & 10481 of 2024 deliberate manipulation to benefit encroachers, obscure the true land and true status, and enable illegal encroachments, exhibiting criminal misconduct. As a senior public official, the accused poses a risk of tampering with official land records and influencing witnesses, obstructing the investigation. Therefore, the actions of the petitioner/accused No.3 have caused significant environmental damage in a Government- protected Full Tank Level area, raising serious public interest concerns.

19. In conclusion, there are serious allegations exist against the petitioners/accused Nos.2 and 3 and quashing of proceedings, at this stage, would hinder the investigation and that allowing the petitioners to potentially interfere with evidence or influence the course of justice. In essence, he prayed the Court to dismiss the criminal petitions, citing concerns that it would obstruct the investigation and potentially allow the petitioners to tamper with evidence or influence the outcome of the case.

20. The Court has reviewed the submissions and material on record, and finds that the petitioner/accused No.2 is alleged to have issued an incorrect sketch map, showing SKS,J Crl.P.Nos.10280 & 10481 of 2024 constructions in Sy.No.49 instead of Sy.No.134, where they actually took place and enabled fraudulent building permits, allowing illegal activity, using his influence and power and tampered with evidence, including land records and survey documents. Further, the petitioner/Accused No.3 is alleged to hold a position of power, posing a risk of tampering with official records. Therefore, the police have registered a case against the petitioners under various sections of the (BNS), i.e., Sections 59, 198, 201, 316(5), 329(3), 324 (3), 49 and 61(2) read with 3(5) of BNS, which are extracted hereunder:

RELEVANT SECTIONS OF BNS:

59. Public servant concealing design to commit offence which it is his duty to prevent.-- Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty

as such public servant to prevent, voluntarily conceals, by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall,--

(a) if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such SKS,J Crl.P.Nos.10280 & 10481 of 2024 imprisonment, or with such fine as is provided for that offence, or with both; or

(b) if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years; or

(c) if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

49. Punishment of abetment if act abetted is committed in consequence and where no express provision is made for its punishment.--Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Sanhita for the punishment of such abetment, be punished with the punishment provided for the offence.

61. Criminal conspiracy.-- (2) Whoever is a party to a criminal conspiracy,--

(a) to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Sanhita for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence;

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(b) other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

316. Criminal breach of trust.--(5) Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

324. Mischief.--(1) Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change

in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief.

(3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

329. Criminal trespass and house-

trespass.--(3) Whoever commits criminal trespass shall be punished with imprisonment of SKS,J CrI.P.Nos.10280 & 10481 of 2024 either description for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both."

21. Reverting to the facts of the case on hand, this Court finds that the petitioner/accused No.2 is alleged to have falsely represented boundaries on a sketch map and issued an unauthorized attested sketch map; and colluded with other accused to help encroachers to obtain permissions on government land and failed to protect government lands and assets, despite holding a responsible position and being actively involved in fraudulent activities related to land boundaries and permissions. Further, the petitioner/accused No.3 is alleged to have made contradictory statements and addressed letters to the District Collector three times, falsely classifying government land as private land. These allegations align with various offences under Sections 59, 198, 201, 49 and 61(2) read with 3(5) of BNS and at this stage, it cannot be said that they are not attracted against the petitioners.

22. That apart, the petitioners/accused Nos.2 and 3 are also charged for the offence punishable under Section 316(5) of BNS. To apply this section, it must be proven that they are public servants they were entrusted with the property or had SKS,J CrI.P.Nos.10280 & 10481 of 2024 dominion over it and that they committed criminal breach of trust with regard to the subject property. For constituting the offence under Section 316(5) of BNS, prosecution has to satisfy the ingredients of Section 316(1) of BNS. There must be entrustment or dominion over property. Dishonestly misappropriated or converted the property to his own use or using or disposing in violation of any directions of law or a legal contract. If we examine the report, there are no allegations with regard to misappropriation or using or disposing of property in contravention of law. However, the complaint lacks independent evidence of entrustment. Further, deriving interest appears to be one of the essential components, report is completely silent on this aspect. Even if the petitioners/accused Nos.2 and 3 partially admitted to entrustment, it doesn't establish the case. Therefore, the prosecution did not make any averment to constitute the offence under Section 316(5) of BNS against the petitioners.

23. That apart, as seen from the complaint, there are no specific allegations to attract Sections 324 (3) and 329(3) of BNS as the petitioners did not commit any mischief and thereby causes loss or damage to any property including the SKS,J CrI.P.Nos.10280 & 10481 of 2024 property of Government or Local Authority and they did not criminally trespassed into the subject lands. Therefore, the said sections are not applicable to the petitioners.

24. In view of the above discussion and considering the facts and circumstances of the case, this Court is of the considered view that, prima facie, there are no averments to constitute the offence against the petitioners under Sections 316(5), 324 (3) and 329(3) of BNS and the same is not applicable to the petitioners and that since the punishment prescribed for the remaining offences alleged against the petitioners/accused Nos.2 and 3 are less than seven (07) years the Investigating Officer is directed to follow the due process of law.

25. In view thereof, these Criminal petitions are disposed of with the following directions:

1. The petitioners/accused Nos.2 and 3 are directed to appear before the Investigating Officer, and in turn, the Investigating Officer is directed to follow the procedure laid down under Section 35 (3) of BNSS (previously section 41-A of Cr.P.C.) and also the guidelines SKS,J CrI.P.Nos.10280 & 10481 of 2024 formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar 1 scrupulously.
2. The petitioners/accused Nos.2 and 3 shall submit their defense and co-operate with the Investigating Officer as and when required by furnishing information and produce all relevant documents/material required for the purpose of the investigation and the Investigating Officer shall consider the same before filing appropriate report before the learned Magistrate concerned.

Miscellaneous applications, if any pending, shall also stand closed.

_____ K. SUJANA, J Date: 13.09.2024 SAI (2014) 8 SCC 273