

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.969 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein, challenging the discharge order dated 15.02.2007, passed by the I Additional Judicial Magistrate of First Class, Warangal, in C.C.No.501 of 2006.

2. The revision petitioner herein is the complainant and respondent Nos.1 & 2 are A.1 & A.2 in C.C.No.501 of 2006 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that the complainant and the accused (A.1 & A.2) are brothers. There was a registered partition effected between them in June 1997. Since the date of partition, the complainant is repeatedly requesting A.2 to pay the registration charges and take the copy of registered partition deed. But, A.2 instead of doing it so, obtained a Xerox copy of certified copy of the registered partition deed and got mutated his name in the municipal records. Further, A.1 & A.2 developed grudge against the complainant and with the direction of A.1, A.2 was creating problems to the complainant and his wife in respect of the common passage and well. At the time of registration of partition deed, A.1 born his expenses for registration, whereas A.2 has not born out the expenses on his behalf. Complainant paid the amount. Thereafter, on the request of A.2 that he will undertake mutation by house number and water tap connection, the complainant purchased Rs.30/- worth stamp paper on 28.11.1996 and given it to A.2. A.2 is creating nuisance in the common passage by dumping unnecessary things. He had broken the pipe of first floor of complainant, in which the tenants are residing. In spite of advice of the

elders also, he has not changed his attitude. A.1 frequently used to visit Warangal and have secret talks with A.2. The common passage is being used by the complainant and his wife. Due to water scarcity, the taps in Warangal will be released once in a week, as such, the complainant and his wife frequently use to draw the well water from back side by using common passage. But, A.1 never objected for the well water, but in collusion with A.2, he is creating problems to the complainant and his wife. Though the complainant lodged a report with police, no action was taken against A.1 & A.2. Hence, the complainant got issued a legal notice to A.2 and his wife. A.2 gave a reply notice on 13.07.2004, wherein the complainant came to know that accused forged an agreement with anti-date dated 21.06.1997, in which they claimed exclusive rights to the passage and thus, A.2 misused the stamp paper given to him by the complainant. Further, on 13.09.204, A.2 unnecessarily beat the complainant and his wife and tried to erect a door in the common passage. Thus, as the police failed to take action against the accused, the complainant filed the private complaint. The complaint was sent to police and the same was registered as a case in Cr.No.353 of 2004 against the accused for the offences punishable under Sections 419, 420, 323, 448 & 458 of the Indian Penal Code (for short 'the I.P.C')

4. The learned I Additional Judicial Magistrate of First Class, Warangal, after considering the entire evidence on record, discharged the accused for the offences punishable under Sections 420, 323, 448 & 458 I.P.C, by his order dated 15.02.2007.

5. Aggrieved by the said discharge order passed by the trial Court, the complainant preferred the present revision case.

6. The learned counsel appearing for the revision petitioner/ complainant argued that the trial Court has not taken into consideration the fact that a stamp paper worth Rs.30/- was given to respondent

No.2/A.2 for mutation of water tap connection and respondent No.2/A.2 cheated the complainant by forging the signature on the said stamp paper; that the police did not examine any witnesses, but gave a final report; that in the year 1997, a partition has been taken place between the parties, who are brothers and the learned Magistrate without recording the statement of the witnesses, passed the discharge orders without considering the plea of the complainant and prayed the Court to set aside the order dated 15.02.2007.

7. On the other hand, the learned counsel appearing for respondent Nos.1 & 2/A.1 & A.2 argued that police after investigation filed a final report, wherein they have clearly stated that the dispute between the complainant and accused is about immovable properties and the case is purely civil in nature; that after receiving the said report, the trial Court discharged the accused; that the trial Court in its order, held that complainant has only one option to file a civil suit to solve the dispute and none of the offences alleged by the complainant were made out as none of the ingredients of any section are made out and therefore, prayed the Court to dismiss the revision case.

8. Now, the point for determination is --

Whether the revision petitioner is entitled to set aside the discharge order dated 15.02.2007 passed by the
I Additional Judicial Magistrate of First Class, Warangal, as prayed for or not?

9. **P O I N T**: A perusal of the record shows that the complainant filed the private complaint against the accused for the offences punishable under Sections 419, 420, 323, 448 & 458 I.P.C, and the same was referred to police. Police after recording the statements of the complainant and other material witnesses, filed the final report stating that the complainant and accused are brothers; that they have immovable properties of their own; that they divided their property between themselves under a registered document on 21.06.1997; that

all the three brothers were using the water of the well and in that regard, there was altercation took place on 13.05.2004; that both the parties abused each other; that the complainant represented the matter to the caste elders on which the elders directed the complainant to bring A.1, who is his elder brother in the panchayat; that the complainant inspite of bringing the accused to the panchayat, filed the criminal complaint and the dispute is civil in nature and this dispute is about the immovable properties between the brothers. After receiving the report, the learned Magistrate after recording the evidence of PW.1 before framing charges, held that in so far as registration expenses are concerned, the complainant have to recover the money from A.2, as such the complainant has not made out the essential ingredients of cheating and the remedy for the complainant is to file a civil suit for recovery of the said amount.

10. The complainant himself in the complaint stated that he purchased Rs.30/- worth stamp paper on 28.11.1996 and handed over the same to A.2 and he did not demand A.2 to return the stamp paper in view of good faith. According to the complainant, the said document was misused and forged by the accused. In so far as stamp paper is concerned, it is not stated by the complainant whether any mention was made in the stamp paper or whether it is a blank paper given to A.2.

11. Now coming to the other allegation made by the complainant that the accused are harassing him and his wife mentally and physically and further, they are interfering with the use of common passage, in that regard, there were only quarrels taken place and no injuries were caused to any of the party. As per the final report, when the elders asked the complainant to bring his brother A.1 for panchayat, the complainant failed to bring and filed the private complaint. Therefore, basing on the material available on record, the trial Court rightly discharged the accused for the offences punishable under Sections

420, 323, 448 & 458 I.P.C and further, the revision petitioner/complainant has also not made out any case to interfere with the findings of the trial court dated 15.02.2007.

12. Accordingly, the Criminal Revision Case is dismissed confirming the discharge order dated 15.02.2007, passed by the I Additional Judicial Magistrate of First Class, Warangal, in C.C.No.501 of 2006.

13. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 10.02.2015

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