

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.5685 of 2013

ORDER :

The petitioners are A1 to A6 in C.C.No.165 of 2013 on the file of Additional Judicial First Class Magistrate, Kovvur, S.P.S.R.Nellore District, which is outcome of crime No.76 of 2012 dated 21.08.2012 of Allur Police Station outcome of private complaint dated 22.01.2012 of the 2nd respondent herein, the defacto complainant that maintained the private complaint against six accused, who are petitioners, that was referred by the learned Magistrate for police investigation under Section 156(3) Cr.P.C. in registration of the crime and subsequent filing of the final report that was taken cognizance by the learned Magistrate for the offence punishable under Sections 420 and 465 read with 34 I.P.C. that is now impugned herein.

2. A reading of the private complaint of the defacto complainant dated 22.01.2012 speaks that A1 represented that he owns Ac.50.57 guntas of land in Singapeta Village of Allur Mandal which he acquired under various sale deeds in the years 1977-78 of which already sold Ac.5.00 cents to one A.Rathnaiah, Ac.10.00 cents to one P.Kamamma, Ac.9.20 cents and Ac.0.80 cents to one G.Savithri and on 25.12.2005 pursuant to which complainant purchased the subject land and took possession having paid the consideration of Rs.8,95,000/- to A1, however because of A1 indebted to the husband of the complainant about Rs.32 lakhs and for recovery of which suits are filed and pending and it is not settled from the efforts, to wreck vengeance he created sale deed dated 06.05.2010 in favour of A2 to A6 for Ac.2.00 cents even the same is part of the land already sold to the complainant under sale deed dated 25.12.2005, that is the sum and substance of the accusation in

saying committed the offence punishable under Section 420 r/w 34 I.P.C., with a request to forward the complaint for investigation.

3. The learned Magistrate did not apply his mind even before forwarding and it is not even a case of any report given before filing a private complaint and even from the allegations to say that it is part of Ac.25.57 cents already sold by A1 to complainant, Ac.2.00 cents in 2010 sold by A1 to A2 to A6, there appears to be no basis from the said complaint from which the crime is registered. Undisputedly, the accused/petitioners 1 to 6 in the quash petition filed that sale deed dated 06.05.2010 executed by A1 in favour of A2 to A6 referring to there was agreement of sale in January/February, 2003 and paid the amount and it is there from executed the sale deed for Ac.2.00 cents by describing in different items. The crux here is the sale deed executed is by A1 in favour of A2 to A6 is for part of the property of the complainant said to have been purchased from A1 or not, from that there is no offence of cheating even taken for granted A1 executed in favour of A2 to A6 sale deed dated 06.05.2010 *interse* nothing to attract the offence punishable under Section 465 defined under Section 463 I.P.C.

4. Coming to the offence of cheating, it is not the case of the complainant that A2 to A6 are privy, if at all privy with A1, it, at best attracts against A1 in saying having already sold to cheat and deceived A2 to A6 in again selling a part of it and they cannot be made liable in the absence of specific allegations against them to cheat the complainant and mere vague allegation if at all is not sufficient to rope A2 to A6 but for at best against A1.

5. Having regard to the above, the proceedings insofar as A2 to A6 are liable to be quashed and also against A1 for the offence under Section 465 I.P.C. but for to sustain under Section 420 I.P.C. which is without prejudice to the right of the 1st accused if at all to show no any grounds to frame charges to discharge and to proceed

with if at all charges framed there under.

6. Accordingly, the criminal petition is partly allowed.

7. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:14-12-2015

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