

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7036 of 2015

ORDER :

The petitioners 1 to 6 are the accused in C.C. No.761 of 2015 on the file of Additional Judicial First Class Magistrate, Karimnagar, the learned Magistrate has taken cognizance for the offences punishable under Sections 420, 467, 464 and 471 IPC, the calendar case is outcome of police final report from the investigation in Crime No.187 of 2012 of Rural Police Station, Karimnagar and it is after police final report or investigation, the cognizance taken supra by the learned Magistrate and the same is now impugning by the petitioners.

2) Heard learned counsel for petitioners and also 1st respondent—State represented by public prosecutor. The 2nd respondent was ordered notice to be served personally by the petitioners and even notice sent by registered post with acknowledgement due by 2nd respondent, he failed to attend, thereby taken as heard. Perused the material on record.

3) The Crime No.187 of 2012 supra is infact outcome of private complaint by 2nd respondent—de facto complainant against the petitioner/ accused herein dated 10.07.2012, the learned Magistrate referred the same for police investigation. The averments in the private

complaint vis-à-vis the same is registered as FIR would show that the de facto complainant is resident of Ashoknagar Area, Karimnagar District, owner and possessor of S.No.726 to an extent of 5.20 gts of Bommakal Village, which is ancestral property; that the 1st accused S.Srinivas filed O.S. No.36 of 2010 for the relief of declaration of title and injunction in respect of Ac.1.00 gts out of above land supra, with a false claim by creating and forging the registered-agreement of sale-cum-GPA in favour of 3rd accused vide document No.6159 of 2012 dated 07.06.2012 and also executed another agreement of sale-cum-GPA in the name of 4th accused with document No.6160 of 2012 dated 07.06.2012 and the accused Nos.1 and 2 knowingly executed the documents though they are not owners as if and the accused Nos.3 and 4 obtained from accused Nos.1 and 2 knowing fully that they are not the owners or titleholders in their connivance. 3rd accused executed sale deed bearing No.6563 of 2012 dated 15.06.2012 in favour of accused No.5 and accused No.5 intentionally proceeded with sale knowing that his vendor—accused No.3 nor his so-called vendors i.e., accused Nos.1 and 2 are not real owners. Meanwhile the accused No.4 also executed sale deed bearing No.6562 of 2012 dated 13.06.2012 in favour of accused No.6, that also intentionally sold by Accused No.4 to Accused No.6 knowingly that the so-called

vendor nor his vendor Accused No.1 and accused No.2 got any right or title, for Accused No.1 and accused No.2 neither owners nor possessors of said Ac.1.00 gts of land in S.No.726, Bommakal village and these are the forged documents to cheat and Accused Nos.1 and 2 in turn sold to Accused Nos.3 and 4, who inturn sold to accused Nos.5 and 6 to cheat petitioners by using documents as if genuine and complainant came to know all these transactions, on 22.06.2012 approached the Karimnagar II Town Police Station and the police refused to receive the report saying that dispute is of civil nature, thereby constrained to file the private complaint.

4) It is also the averment that O.S. No.80 of 2011 filed by one Kachakayala Narsaiah against the de facto complainant and others on the file of V Additional District Judge, Karimnagar and later the same was not pressed by the plaintiffs on 21.06.2012 which is also outcome of collusion. It is there from said referring of the private complaint for police investigation; the learned Magistrate did not even pass any worthy order by application of judicial mind in referring the complaint to police but for mere extracting the complaint enclosed with five documents i.e., Xerox copy of complaint in O.S. No.36 of 2010 and the registered documents (supra) bearing Nos.6563, 6562 and 6160 and 6159 respectively of accused Nos.3 and 4 obtained by accused Nos.1 and 2 and inturn executed in favour of accused Nos.5 and 6.

The police after investigation by citing the complainant besides four more circumstantial witnesses including two punch witnesses filed the final report as dispute of civil nature saying from the material collected during investigation, it established that father of accused No.1 by name S.Lachaiah has purchased Ac.1.00 gts of land in S.No.726 from original owner through registered sale deed bearing document No.1327 of 1965 dated 16.07.1965 and again about one year later Lachaiah purchased Ac.1.10 gts of land in the same survey number from the original owner through registered sale deed bearing No.1373 of 1966 dated 2.06.1966, since then said Lachaiah continuing in possession. In the year 1990, Government formed bye-pass road which passed through S.No.726 wherein said Lachaiah lost Ac.0.08 gts of land from Ac.1.00 gts of land which was purchased through document No.1327 of 1965 and another Ac.0.06 gts out of Ac.1.10 gts which was purchased through document No.1373 of 1966. Out of Ac.0.32 gts of land on western side of road said Lachaiah sold out the sale during the year 1994 by making them plots. Out of the land extent of Ac.1.04 gts said Lachaiah sold out Ac.0.04 gts of land and remaining Ac.1.00 gts of land was in his possession. Subsequently, in the year 2003 the said Lachaiah was died and the alleged accused Nos.1 and 2 became successors of property they have also mutated their names in the revenue records for that Ac.1.00 gts. Thus,

the accused Nos.1 and 2 got right from 1965-66 since they purchased of Ac.2.10 gts in S.No.726 and there are civil suits in relation to the properties and for the complainant along with his men trespassed into the land and damaged the land of accused Nos.1 and 2, Crime No.156 of 2010 registered by Police Karimangar Rural, on their report for the offence punishable under Sections 447, 427 r/w 34 IPC, thereby the dispute is purely of civil nature.

5) It is there from protest application filed by the de facto complainant and by recording sworn statement of complainant and two more punch witnesses, the learned Magistrate has taken cognizance in registering the calender case by order dated 12.05.2015 in CrI.M.P. No.761 of 2015 as C.C No.761 of 2015, which is now impugned.

6) A perusal of the complaint filed by the accused Nos.1 and 2 in O.S No.36 of 2010 against 9 persons for declaration and injunction in respect of Ac.1.00 gts in S.No.726 of Bommakal Village referred supra from the police final report wherever the de facto complainant Mohsin Shah Khan, who is 7th defendant in O.S. No.36 of 2010, clearly speaks that the location of the property in two parts with road running of 30 ft in between and they claimed as based on two sale deeds i.e., 1326 of 1965 and 1373 of 1966 after deducting portions sold by them,

thereby the record clearly speaks the accused 1 and 2 are in possession and enjoyment with title since 1965-66. Their father purchased Ac.1.00 gts of land in S.No.726 of Bommakal Village which is subject matter of O.S. No.36 of 2010, and the private complaint filed is subsequent to the suit filed on 02.06.2010, only on 10.07.2012 with weaved story and there is nothing even dramatically to show the documents executed by accused Nos.1 and 2 in favour of accused Nos.3 and 4 and in turn sold in favour of accused Nos.5 and 6 are made forgery or fabrication when the executant and the vendors and vendees say those are genuine in registering the crime and it is not shown how it tantamounts to cheating or using as genuine any forged or fabricated document for the purpose of cheating even the accused got title to Ac.1.00 gts of land supra in S.No.726 subject matter of O.S No.36 of 2010 thereafter from 1965-55 the complainant can show nothing as to how he got any right or title over the property even to claim much less to maintain the private complaint which is nothing but abuse of process and suppression of material facts in filing the complaint with extraneous reasons, thereby the prosecution is liable to be quashed.

7) Accordingly, the Criminal Petition is allowed and all the proceedings relating to C.C. No.761 of 2015 on the file of Additional Judicial Magistrate of First Class, Karimnagar, is quashed. The bail bonds of the petitioners/ accused Nos.1 to 6, if any, shall stand

cancelled.

8) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

18.11.2015

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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Date:18.11.2015

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