

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ CRIMINAL PETITION Nos.978, 979, 1124 & 9422 of 2014

% 31-08-2015

CRIMINAL PETITION No.978 of 2014

#Kodali Lalitha Kumari

....Petitioner/A-2

Vs.

\$ The State of A.P. rep. by its Public Prosecutor & 2 others

.... Respondents

CRIMINAL PETITION No.979 of 2014

#Galla Setharamaiah & 6 others

....Petitioners/A-1, 3, 4, 6, 7, 8 & 11

Vs.

\$ The State of A.P. rep. by its Public Prosecutor & 2 others

.... Respondents

CRIMINAL PETITION No.1124 of 2014

#Muttavarapu Subba Rao

....Petitioner/A-13

Vs.

\$ The State of A.P. rep. by its Public Prosecutor & 2 others

.... Respondents

CRIMINAL PETITION No.9422 of 2014

#Jarugula Satyavathi

....Petitioner/A-5

Vs.

\$ The State of A.P. rep. by its Public Prosecutor & 2 others

.... Respondents

!Counsel for the Petitioners: Sri A.Sudhara Rao & Sri G.L.Nageswara Rao

Counsel for the Respondents : Public Prosecutor & respondent Nos.2 & 3 party-in-person

<Gist :

>Head Note:

? Cases referred:

1. 1980(2) APLJ 59
2. 2005 CrI.J 2161
3. (1998)2 SCC 493

IN THE HIGH COURT OF JUDICATURE AT

HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF
ANDHRA PRADESH

CRIMINAL PETITION Nos.978, 979, 1124 & 9422 of
2014

CRL.P.No.978 of 2014:

Between:

Kodali Lalitha Kumari

... Petitioner/A-2

and

The State of Andhra Pradesh rep. by its Public Prosecutor
& 2 others

... Respondents

CRL.P.No.979 of 2014:

-

Between:

Galla Setharamaiah and 6 others

... Petitioners/A1, 2, 4, 6 to 8 & 11
and

The State of Andhra Pradesh rep. by its Public Prosecutor
& 2 others

... Respondents

CRL.P.No.1124 of 2014:

-

Between:

Muttavarapu Subba Rao

... Petitioner/A-13

and

The State of Andhra Pradesh rep. by its Public Prosecutor
& another

... Respondents

CRL.P.No.9422 of 2014:

-

Between:

Jarugula Satyavathi

... Petitioner/A-5

and

The State of Andhra Pradesh rep. by its Public Prosecutor
& 2 others

... Respondents

DATE OF JUDGEMENT PRONOUNCED:31-08-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

**CRIMINAL PETITION Nos.978, 979, 1124 & 9422 of
2014**

COMMON ORDER :

All these Criminal Petitions are filed by Petitioners/Accused
Nos.1 to 8, 11 & 13 under Section 482 Cr.P.C seeking to quash
the proceedings in Crime No.24 of 2014 on the file of

Nagarampalem Police Station, Guntur Urban, Guntur District registered for the offences punishable under Sections 120-B, 380, 466 and 468 read with 34 I.P.C., on the report of the two defacto-complainants dated 23.01.2014.

2) The main allegations, in the report presented by the 2nd respondent and his mother shown as 3rd respondent in some of the petitioners (supra) which was registered as a crime as stated supra, are that the one Kodali Lalitha Kumari (A-2) with the active collusion and conspiracy of other accused including her brother and sisters (all 15 in number) stealthily replaced the original title deeds of the property of the defacto-complainants with fake documents through their advocates which were filed as Exs.A-1 (document No.11828/1981) and A-2 (document No.380/1982) in O.S. No.854 of 2007 on the file of the I Additional Junior Civil Judge, (which they came to know after filed application for return of the Exs.A-1 and Ex.A-2), that the same property hurriedly registered to others four sale deeds attested by A-11 & A-12; with the help of a fake notarized will attested and notarized by A-13 to A-15 and by using the stolen original documents; that the accused forcibly dispossessed the respondent Nos.2 and 3 from their property by bribing the public servants belonging to registration and police departments even they obtained injunction order in I.A. No.77 of 2013 in O.S. No.8 of 2013 on the file of IV Additional Senior Civil Judge, Guntur.

3. Heard the learned counsel for respective petitioners as well as the State represented by the Public Prosecutor and also the respondent Nos.2 and 3 appeared in-person and perused the material on record. For the sake of convenience and to avoid confusion in all the four petitions, the petitioners respectively being

referred as respective accused while the defacto-complainant as respondent Nos.2 and 3.

4) Undisputed facts in this regard are that A-2 is the wife of one Kodali Atchaiah Chowdary who died issueless on 15.12.2010. A-3 to A-6 are sisters and brother of A-2 and A-7 to A-10 are alleged vendees from A-2 and A-1 is the masterminds behind. The 2nd respondent is son of 3rd respondent, who is the sister of said Atchaiah Chowdary. Said Kodali Atchaiah Chowdary filed a suit in O.S. No.854 of 2007 on the file of I Additional Junior Civil Judge, Guntur against his neighbours for permanent injunction in respect of some of his property situated in Syamala Nagar, Guntur and the same was decreed on 26.10.2009. He filed therein to support his claim the Exs.A-1 and A-2 supra during the course of trial. After demise of said Atchaiah Chowdary, the 2nd respondent filed an implead petition to implead himself as his legal heir. Besides opposing the same, the wife (A-2) of said Atchaiah Chowdary filed an application to implead her as a legal representative of her deceased husband and to discharge the 2nd respondent and the same is pending for adjudication, while so, the A-2 is trying to alienate the properties, the 2nd respondent made an objection before the Sub-Registrar concerned for registration of any documents. Upon the same, the A-2 filed a writ petition in W.P.No.3312 of 2013 before this Court, in which this Court (another bench) directed the sub-Registrar to receive the documents and thereafter the A-2 alienated the property in favour of A-7 to A-10 under four registered sale deeds dated 25.02.2013.

5) The 2nd respondent herein filed a suit in O.S. No.81 of 2013 on the file of V Additional Senior Civil Judge, Guntur disputing the notarized will dated 03.06.2000 said to have been

executed by the husband of the A-2-Lalitha Kumari with bequeaths in her favour and also seeking to deliver possession of the subject property by impleading the purchasers (the respective accused persons supra) and the said suit is pending. The claim of the 2nd respondent is that his mother's brother Atchaiah Chowdary (a retired Government Servant) died testate on 15.12.2010 having been deserted long back by his wife (A-2), executed will dated 09.07.1995 registered later on 23.07.1998 as document No.294/1998 in favour of him and his mother and the property covered by the bequeaths in the will includes the valuable house site of Syamala Nagar, Guntur town and later the second one is O.S. No. 81 of 2013 filed by the 2nd respondent herein against the respective accused herein as defendants questioning the Will executed in favour of the Petitioner/A-2.

6) Now, the allegation in the present crime is that the A-2 along with others stolen the Exs.A-1 and A-2 which were marked in O.S. No.854 of 2007 on the file of I Additional Junior Civil Judge, Guntur. Earlier to the present crime, the 2nd respondent presented a report which was registered as a case in Crime No.199 of 2013 of Pattabhipuram Police Station, Guntur for the offences punishable under Sections 448, 427, 379, 506 read with 34 I.P.C against the A-2 and other accused of Crime No.24 of 2014 of Nagarampalem Police Station referred supra, for criminal intimidation, trespass, dispossession theft and mischief by demolition of the compound wall on 05.04.2013, despite there is injunction order in I.A. No.77 of 2013 in O.S. No.81 of 2013. It is needless to say on the A-2's report, Pattabhipuram Police, against the 2nd respondent herein registered Crime No.55 of 2013 for the offence under Section 354 I.P.C which was later on investigation

referred as false.

7) In the factual back ground supra from perusal of the entire material placed before this Court with respective submissions of both sides, this Court finds that both the parties having their own civil lis pending before the Civil Courts respectively disputing the two wills viz., one un-registered will said to have been executed on 03.06.2010 in favour of A-2 and the other earlier will dated 09.07.1995 in favour of the 2nd respondent registered on 23.07.1998 which have to be adjudicated by the civil Courts and the other accused-alleged vendees of the subject property of alleged bequeaths also filed another civil suit against the respondent Nos.2 and 3 in O.S. No.267 of 2013 on the file of I Senior Civil Judge, Guntur. Apart from that the alleged stealing of Exs.A-1 and 2 original documents by replacing colour Xerox copies with forgery for purpose of cheating etc., was from the civil Court record of O.S. No.854 of 2007. The present crime No.24 of 2014 of Nagarampalem Police Station is for the same that happened in the Court proceedings or from the Court record stealthily taken away originals and replaced with forged and fake colour Xerox copies. It is now to consider whether barred by Section 195 Cr.P.C of police registering the crime and investigating into it.

8) A plain reading of Section 195(1)(ii) and (iii) Cr.P.C. would show that for the offences mentioned therein the Court has to take cognizance only from complaint in writing filed by the Court or some other Court to which that Court is subordinate before which the original documents in question is found to be stolen and substituted with forged ones, of the accused before that Court if found to have committed any offence. In the instant case,

the documents Exs.A-1 and A-2 while they were, during the custody of the Court, stolen. Therefore, it would be the civil Court which would be the proper complainant in this case and not a private individual or the police to register a crime. Therefore, the registration of F.I.R on basis of report submitted by the individuals (respondent Nos.2 and 3) is hit by the provisions of Section 195(1)(b)(ii) and (iii) Cr.P.C. So far as Sections 463, 465, 468, 471 I.P.C is concerned, Section 463 I.P.C defines a forgery simpliciter whereas Sections 465 to 471 I.P.C define punishment for forgery and for other aggravated forms of forgery like forgery for purpose of cheating etc. In the light of the phrase 'of any offence described in Section 463 I.P.C' section 468 also will be hit by the provisions of Section 195(1)(b)(ii) of the Cr.P.C the same was also laid down by this Court in ***Vishnu Kumar V. State of A.P.***^[1] Further, the 5 Judges bench expression of the Apex Court in ***Iqbal Singh Marwah V. Meenakshi Marwah***^[2] held that the bar under Section 195(1)(b) Cr.P.C would be attracted for the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence and during the time when the document is in custodia legis and not for forged document produced in a Court. It is held referring to the earlier expressions, particularly of ***Sachida Nand Singh V. State of Bihar***^[3] by approving the law laid down in ***Sachidanand Singh***. It is held that Section 195(1) Cr.P.C in respect of particular offences is a sort of exception to the general provision Section 190 Cr.P.C of power of Magistrate to take cognizance of an offence under any of the three modes. The procedure for filing a complaint by Court contemplated by Section 195(1) Cr.P.C is given in Section 340 Cr.P.C. As per Section 340 Cr.P.C, the Court is not bound to

make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C, if the Court is of the opinion that interest of Justice requires and not in every case. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a recourse is rarely adopted. Same proposition is reiterated in a later expression of the Apex Court in ***C.P.Subhash V. Inspector of Police, Chennai*** (Crl.A.No.176 of 2013).

9) So far as Section 380 I.P.C concerned the allegation is that theft in dwelling house which is used for the custody of the property. The custodian of the property is no doubt the civil Court. However, the bar under Section 195(1) not covered the offence punishable under Section 380 I.P.C.

10) Thus there is no bar for the police registering and investigating the Crime No.24 of 2014 on the report of the defacto-complainants so far as the offence under Section 380 I.P.C concerned, so also for the offences under Sections 466, 468 and 120-B I.P.C in so far as the allegation relates to the alleged notarized and unregistered will dated 15.12.2010 propounded by A-2 as the police report contains allegations in this regard also in saying A-13 to A-15 are criminally liable with A-2 if not also with A-3 to 6 bar under Section 195(1) Cr.P.C is only for taking cognizance on police final report under Section 173 Cr.P.C by Magistrate under Section 190 Cr.P.C, where forgery committed while the documents in Court custody in relation to the documents. It is to say, there is no bar for registering the Crime and investigation by police. Thus, any argument of bar under

Section 195(1)(b) Cr.P.C for the offence under Section 463, 466, 468 and 471 Cr.P.C so far as alleged substitution of forged colour Xerox in place of originals of Exs.A-1 and A-2 documents of O.S. No.854 of 2007 is premature, for not reached stage of taking cognizance. So far as other merits concerned it is left open to accused to raise only after police filed final report and any cognizance taken by the Magistrate.

11) Having regard to the above, the petitions are disposed of for no grounds to quash the Crime No.24 of 2014 of Nagarampalem police Station, Guntur Urban, Guntur District for no bar of Section 195(1)(b) Cr.P.C so far as the offence under Section 380 I.P.C concerned in relation to Exs.A-1 and A-2 of O.S. No.354 of 2007 but for in relation to substituted colour Xerox copies of it by alleged forgery for purpose of cheating or using as genuine the so called forged documents that too the bar is for taking cognizance on police final report and not for registering crime and investigation of the Crime No.24 of 2014. Further, there is no bar under Section 195(1)(b) Cr.P.C, so far as alleged forgery of notarized un-registered will propounded by A-2 dated 15.12.2010 for offences under Section 466 and 468 read with 34 and 120-B I.P.C either for the Crime No.24 of 2014 registered or for investigation or even for taking cognizance by Magistrate on final report. It is left open to the accused to vindicate any of their grievance by filing fresh quash proceedings after police final report and cognizance taken by Magistrate, in other respects on merits if no case made out against all or any particular accused among A-1 to A-15 for any of the offences.

12) As a sequel, miscellaneous petitions pending if any in the above criminal petitions shall stand closed.

31.08.2015
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[\[1\]](#) 1980(2) APLJ 59
[\[2\]](#) 2005 CrI.J-2161
[\[3\]](#) (1998)2 SCC 493