HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.3871 and 5534 of 2013

ORDER :

The petitioners in Crl.P. Nos.3871 of 2013 are accused Nos.1 and 5 in Crime No.312 of 2012 dated 13.09.2012 of Humayun Nagar Police Station, Hyderabad and the petitioner in Crl.P.No.5534 of 2013 is accused No.2 in the above said Crime, which is outcome of report of 2nd respondent—de facto complainant dated 13.09.2012. The said report was addressed to the Commissioner of Police on 13.09.2012 to refer the same to Humayun Nagar Police Station to register the crime and take necessary action in registering the crime for the offences punishable under Sections 420, 406, 468, 471, 506 and 120-B IPC.

2) The factual matrix of the report of the de facto complainant against seven accused in all viz., D.Krishna Kumari (A1), B.Venkat Reddy (A2), Ch.Sivaji Raju (A3), J.V.V.S.S.Prasada Raju (A4), M.Sethu Madhav (A5), SVMK Prasad (A6) and S.Vijaya Laxmi (A7) is that accused Nos.1 and 2 approached the complainant for financial assistance upon which the complainant arranged a hand loan of Rs.20 lakhs each to A1 and A2 on 21.05.2005 and 28.05.2005 respectively and they also executed an undertaking-cum-deposit of title deeds for mortgage of the property viz., plot Nos.34 and 35, Sy.No.455/ part admeasuring 350 Sq.yds at KNR Hills, Puppalaguda Village, R.R District covered by registered sale deed document No.5958 of 2004 dated 17.07.2004 of accused No.1 and house bearing No.23-92/4/A, Plot No.92, Sy.No.813, admeasuring 327 Sq.yards at Chilkanagar, Uppal Kalan Village, Uppal Mandal & Municipality, Ranga Reddy District covered by registered sale deed document No.5797 of 2003 of accused No.2, on 21.05.2005 and 28.05.2005 on the date of alleged loan. Leave about any inconsistency in mentioning as if it is originally a hand loan and later executed the undertaking letters but those were the alleged hand loan or lending or execution of so-called memorandum of even date; it is further averred in the complaint that accused Nos.1 and 2

agreed to repay the alleged amount within five years with interest at 14% per annum on or before Rs.20.05.2010 and 27.05.2010 respectively and failed to pay. Subsequently the complainant came to know that, accused No.3 to accused No.5 mortgaged the property at behest accused No.1 in favour of A6—bank and accused No.2 sold the property in favour of accused No.7 and they started making claims with their interse collusion that too even by dividing the property of accused No.1 into two parts and later accused No.1 cancelled the agreement of sale-cum-GPA that was executed in favour of accused Nos.3 and 4 and again registered the sale deed dated 02.04.2011 in favour of accused No.5 vide registered document No.965 of 2011. Despite accused Nos.1 and 2 mortgaged the property by deposit of title deeds, the so-called subsequent purchase by accused No.5 from accused No.1 and accused No.5 in turn mortgaged with A6—bank and thereby alleging all are liable including in saying the A6—bank in taking deposit of title deeds and as if original title deed deposited by accused No.5, through accused No.1 did not hand over the original title deed during alienation to accused No.5 as already deposited the original title deed while creating equitable mortgage by deposit of title deed and equally by deposit of original document by accused No.2 in favour of complainant and not handed over the original subsequently from the alienation to accused No.7 and it is thereby all by collusion and being privy to the crime are liable to be prosecuted. It is further averred that the suit is maintained by de facto complainant against accused Nos.2 and 7 in O.S. No.493 of 2012 and pursuant to the original deposit of title deed, an injunction also obtained by filing that title deed and another suit O.S. No.485 of 2012 filed against accused Nos.1, 5 and 6 also by showing accused Nos.3 and 4 and there also obtained injunction by filing of original title deed in deposit. It is therefrom the crime is registered and is pending investigation and the petitioners or some of them among the accused moved for anticipatory bail and the same was ended in dismissal. It is subsequently, the accused Nos.1, 2 and 5 as petitioners supra respectively filed the two quash petitions and there is an interim stay of investigation and arrest which is still in force.

3) Heard both sides at length and perused the material on record including the learned public prosecutor represented by 1st respondent—State in both the quash petitions apart from 2nd respondent —complainant represented by counsel and the same counsel filed quash petitions in the two sets supra.

4) From the very complaint averments there is no cheating or forgery much less forgery for the purpose of cheating or using as genuine any forged documents, so far as between the accused persons and the complainant concerned. As it is not even the case of complainant from reading of the averments in the police report supra of the property already alienated or with defective title duped for lending and created mortgage by deposit of any defective title deed without having any right or by suppressing any earlier mortgage or earlier alienation if at all. It is the clear case of oral lending and subsequent deposit of title deed and a subsequent acknowledgement for it as referred supra. There is nothing even to say that there was any defective title. The accused persons are disputing including in the civil suit about the so-called deposit of title deeds and the alleged borrowal with contentions as untrue and that there is no consideration supporting the alleged respective two equitable mortgages. The civil suits are pending undisputedly from the year, 2012. The alleged report is undisputedly subsequent to the civil suits, as civil suits appear to have been filed in April and June, 2012 respectively; whereas the complaint was filed on 13.09.2012.

5) From the very complaint averments of the de facto complainant of, subsequent to the so-called lending to accused Nos.1 and 2 and creation of equitable mortgage by them by deposit of title deed and execution of memorandum of past transactions, accused No.1 entered into contract for GPA-cum-sale agreement with accused Nos.3 and 4 after 2010 or 2011 and they in turn cancelled the same. So practically there is no role of accused Nos.3 and 4 to implicate them in the crime who are not before this Court to say anything further in relation

to the crime for investigation against them. So far as accused Nos.1, 5 and A6—bank are concerned, there is no bar for second mortgage even for arguments sake the first mortgage is in subsistence, but for if at all any alienation is subject to liquidation of the first mortgage. Thus, practically there is no specific plea so far as A6—bank is concerned even in the form obtained by A6—bank from accused No.5 it is mentioned of original title deed of accused No.5 deposited with the bank, there is no crime to sustain against the A6—bank and its Manager or other officers concerned but for not before this Court to say anything further in relation to the Crime for investigation against A6—bank. So far as accused No.5 is concerned, accused No.5 claims as a bonafide purchaser. If once it is a purchase, even there is an earlier mortgage, the right of vendee from mortgage is subject to the discharge of the mortgage and beyond that there is nothing can be attributed so far as accused No.5 is concerned from any sale by accused No.1 to accused No.5 even there is lack of bonafide enquiries and in not insisting for source of title of accused No.1 original document. Thereby, practically there is no case so far as accused No.5 herein also concerned.

6) Now coming to accused Nos.1 and 2 concerned, no doubt they are disputing about the receiving of consideration, however, they are not disputing their signatures on the memorandum of deposit of title deeds and also deposit of title deeds. According to the complainant, he arranged hand loan amount of Rs.20 lakhs each to accused No.1 and accused No.2 on deposit of their respective title deeds by execution of memorandum respectively and subsequently they got alienated the property by accused No.1 to accused No.5 and accused No.2 to accused No.7; leave about in turn alienation or mortgage by accused No.5 to A6—bank. Undisputedly, the alienation by accused No.1 to accused No.3 and accused No.4 was cancelled. Thus, there is no evidence of cheating from inception of borrowal and deposit of title deeds; even subsequently there is no any dishonest intention developed so far as even against accused Nos.1 and 2 concerned. However the fact remains among the other offences for which the crime registered under

Sections 506 and 120-B IPC concerned, it is the vague allegation and there is no specific date or time mentioned of the alleged threat to attract the offence under Section 506 IPC. So far as accused Nos.1 and 2 are concerned, there remains Section 406 IPC among the offences for which the crime is registered. No doubt, if at all subject to the dispute among passing of consideration they deposited their title deeds and executed memorandum, leave about the contention of subsequently filled their signed papers, if not there is an offence, it is at best under Section 406 IPC to say as per the complaint averments of the property created equitable mortgage by depositing title deeds and alienated subsequently by committing breach of trust having entrusted with dominion over the property by equitable mortgage.

7) Thereby but for the offence under Section 406 IPC, if at all, there is no other offence for which the crimes registered against accused Nos.1 and 2 to survive for the police to investigate and file final report in the pending crime.

8) Having regard to the above, the Criminal Petitions are partly allowed and all the proceedings relating to Crime No.312 of 2012 of Humayun Nagar Police Station, Hyderabad, against 2nd petitioner/ accused No.5 is quashed and his bail bonds, if any shall stand cancelled. The crime proceedings against accused Nos.1 and 2 are concerned, but for at best the offence under Section 406 IPC there is no other offence made out, leave about no offence made out against accused Nos.3, 4, 6 and 7 for the police pursuant to which to investigate and to file final report if any against accused Nos.1 and 2 preferably within three months. Needless to say in the meantime, the accused Nos.1 and 2 shall not be arrested but for requiring appearance as and when in need for the purpose of investigation.

9) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.12.2015
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Date:14.12.2015

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