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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CRIMINAL PETITION No.9023 OF 2013

ORDER:

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The petitioners are A1, A2 and A3. They sought for quashing C.C.No.12 of 2013 on the file of V Additional Judicial First Class Magistrate, Kakinada. Respondent No.2 is the complainant in that case.

Perused the complaint, which was filed in the paper book in this case.

Petitioner No.1/A1 is the wife of one Sri Budidha Venkata Ramana, who died, and petitioner Nos.2 and 3 are the son and daughter of petitioner No.1 and said late Budidha Venkata Ramana. They are residing at Rajahmundry.

Respondent No.2/complainant's case is that he and the deceased Sri Budidha Venkata Ramana are friends and the complainant used to visit the family of Sri Budidha Venkata Ramana frequently and as a result, the petitioners herein, who are the family members of Venkata Ramana, are known to respondent No.2/complainant fairly and closely. It is the case of respondent No.2/complainant that due to untimely and premature death of Venkata Ramana, the complainant has been extending not only moral support, but also financial support to his family members. It is the case of the complainant that he had lent money very liberally to enable petitioner No.3 herein to complete her B.Tech course.

The main grievance ventilated in the complaint by respondent No.2/complainant is that taking advantage of his absence at his house at Kakinada, all the three petitioners herein in the company of LW.1

gained access to his house by opening the doors using a duplicate key and they have also opened the almirah and stolen the valuable documents, such as promissory notes, signed blank cheques, A.T.M. Card etc., and, hence he lodged the complaint for the alleged offences under Sections 406, 420, 448 and 380 read with Section 34 I.P.C. It was his case that LW.1, being the sister of petitioner No.1 herein, allowed the petitioners to the house of the complainant in his absence. While the petitioners were all ransacking his house with a view to take away the valuables therefrom, LWs.2 and 3 visited his house in view of certain business transactions. But, however, the petitioners have sent away LWs.2 and 3 informing them that the complainant was away camping at Visakhapatnam and he would return to Kakinada only after one week.

I have heard Smt. Ch. Ganga Kumari, learned counsel for the petitioners, and also learned Public Prosecutor on behalf of respondent No.1/State. However, I could not have the benefit of hearing learned counsel on behalf of respondent No.2/complainant, as he did not appear when the matter is called.

At the very outset of his complaint, the complainant described himself that he is a Contractor and he was also executing some petty civil works at Kakinada and Visakhapatnam. Though he was a permanent resident of Amalapuram, he was residing at the premises bearing Door No.65-6-24/1, Mehar Nagar, Kakinada, so that he can attend to his works at Rajahmundry.

In paragraph No.7 of the complaint, the complainant would describe that in the month of August, 2009, he entered into an agreement of sale for purchase of a house site admeasuring 266.66 sq. yards situated at RR Nagar, Kakinada, for a total sale consideration of Rs.11,00,000/- and that he has already paid

Rs.10,00,000/- to the seller with a promise to pay the balance sale consideration of Rs.1,00,000/- at the time of registration of the house. Thereafter, he proceeded with a statement that out of confidence, the transaction has been entered into by the complainant in the name of petitioner No.1 herein. The complainant further proceeded and would state that when the seller refused to perform her part of the obligation, a civil suit in O.S.No.121 of 2009 has been filed in the name of petitioner No.1 herein and the same is pending on the file of VII Additional District Judge, Kakinada. In paragraph No.9 of the complaint, it was further alleged that the complainant lent an amount of Rs.2,00,000/- to one Smt. Chella Shobhavali, W/o.Satyanarayana of Ramachandrapuram of East Godavari District in March, 2010. However, out of confidence and trust upon petitioner No.1 herein, the complainant got executed the said promissory note in favour of A1/petitioner No.1 herein and when the complainant demanded for repayment, the borrower Smt. Ch. Shobhavali gave a cheque for Rs.1,42,000/- on 28.05.2010 in favour of petitioner No.1/A1 and when the cheque was dishonoured, the complainant got filed a case against Smt. Ch. Shobhavali in the name of A1/petitioner No.1 herein under Section 138 of the Negotiable Instruments Act in C.C.No.301 of 2010 on the file of II Additional Judicial Magistrate of First Class, Rajahmundry.

The above two statements are so plainly unbelievable. The complainant cannot be assumed to be lacking in worldly wisdom, when he is carrying on the profession of a civil Contractor. Learned counsel for the petitioners, therefore, contended, in my opinion rightly, that it is the monies of the petitioners herein which have been utilized by the complainant and it is in fact the petitioners, who have trusted the complainant earlier, but not the otherway. Therefore, it is contended that the allegation that the petitioners herein have stolen documents

from the custody of the complainant, is so palpably unbelievable. This apart, learned counsel for the petitioners have also contended, again rightly, that the complainant cannot be so naïve to leave the second set of keys of the house and the second set of keys to his iron-safe with the petitioners, for them to gain access to his house in his absence and also open his iron- safe. Learned counsel for the petitioners would, therefore, urge that with a view to cause harassment and hardship to the petitioners and to prevent them from utilizing the monies through and receivable by them, the complainant has devised this method of falsely implicating the petitioners in a criminal case.

When the complaint, as a whole, has been read, it does not inspire any confidence. No one with any amount of sense would leave duplicate keys of his house with some third parties, however, close acquaintance one may have with them. it is all the more so plainly unbelievable that even a duplicate key to an iron-safe would have been left particularly when the iron-safe is stated to be containing very valuable assets. The allegations are so plainly unbelievable and, hence, they do not make out the offences said to have been committed by the petitioners herein. Further, if one were really intending to buy a motor cycle, as is now sought to be made out in the complaint, one does not keep signed blank cheques in an iron-safe, to be delivered to the dealer of the motor cycle at a later point of time.

Therefore, I have no hesitation to quash the proceedings against the petitioners/A1 to A3.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/A1 to A3 in C.C.No.12 of 2013 on the file of V additional Judicial Magistrate of First Class, Kakinada are quashed.

Consequently, the miscellaneous petitions, if any, shall also stand disposed of.

JUSTICE NOOTY RAMAMOHANA RAO

16.06.2015
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