

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.7526 of 2013

ORDER:-

The petition is filed under Section 482 Cr.P.C., for quashing of proceedings in Cr.No.266 of 2013 of P.S.Pet-Basheerabad insofar as it is concerned against the petitioners, who are A.5, A.6, A.8, A.9, A.11 and A.10.

2. The 2nd respondent filed a complaint alleging offences punishable under Sections 406, 120-B, 404, 420 and 468 IPC., before the XV-Additional Judicial Magistrate of First Class, Cyberabad at Medchal, and the same was referred to police for investigation, upon which crime was registered on 08-05-2013. In the private complaint in all 11 persons were shown as respondents/accused.

3. Sailu had two sons namely Paipula Laxmaiah and Paipula Anjaiah. The family had about Ac.3.23 guntas of land in Sy.No.25/1/LU in Pet Basheerabad village. The said land is said to have been divided in between the two families and each one of them got about Ac.1.31 ½ guntas. The *de facto* complainant is the son of Paipula Laxmaiah. It is lavani patta land and it was assigned in accordance with rules in favour of Sailu. Pahanies reflect the said aspect right from the year 1954-55. In the year 1966 itself Paipula Anjaiah, the brother of Laxmaiah, is said to have relinquished his rights in the said land in favour of Laxmaiah, the father of the complainant.

4. When the complainant and his family intended to sell the land, a *no objection certificate* from the revenue authorities was sought for. When approached, the revenue authorities stated that the land in Sy.No.25/1/LU is a Government land. The District Collector, Ranga Reddy, ordered for an enquiry and the Tahasildar held enquiry and submitted a report which shows that the land belongs to the family of the complainant. The report was submitted in January, 2012 and the matter is pending with the District Collector for issuance of *no objection certificate* in favour of the

complainant.

5. Recently, the complainant came to know that some unauthorised persons have clandestinely and illegally got managed to get sale deeds in their favour without the knowledge and consent of the complainant and his family members. Enquiries reveal that the said sale deeds were illegally executed by the respondents/A.5, A.11, A.8, A.9 in favour of A.6 and A.10. The said sale deeds are said to be executed by unauthorised persons with a dishonest intention of cheating and misappropriation. The non-petitioners/A.1 to A.4 have brought into existence a GPA which was without any consideration to the branch of the complainant.

6. After obtaining the registered documents, the complainant came to know that the petitioner/A.5 and others executed registered documents in the year 2010 showing themselves as owners and pattedars without any right or title. It is alleged that A.1 to A.4 brought into existence a forged GPA document bearing No.47 of 1981 alleged to have been executed by Paipula Laxmaiah, the father of the *de facto* complainant and others at a time when the *de facto* complainant and his brother Ashok were minors.

7. Paipula Laxmaiah, the father of the *de facto* complainant, died on 04-04-1989 whereas the alleged registered sale deeds bearing No.7971/1989 and 7972/1989 were purported to have been executed on 11-07-1989 under the guise of forged GPA.

8. K.Seeta Rama Raju who is shown as A.7 executed the sale deeds on the basis of forged GPA. It is alleged that A.1 to A.4 have brought into existence the forged GPA behind the back of the family of Paipula Laxmaiah.

9. It is alleged that when Paipula Laxmaiah, the father of *de facto* complainant and the original pattedar, is said to have died on 04-04-1989, the alleged sale deeds were executed on 11-07-1989. Thereafter, all the accused persons colluded together and created several documents by playing fraud and cheating with the help of forged documents.

10. The complainant got issued a notice to the Registration Authorities on 16-03-2013 for cancelling the illegally executed documents.

11. The complainant therefore prayed for action to be taken against the respondents/accused in the complaint for the offences alleged.

12. For the sake of convenience, the petitioners/accused has categorized the entire land as schedule 'A'. It is said that in between the two brothers, the land was divided and each one of them has got half of it and the land that is fell to the share of Laxmaiah, the father of the *de facto* complainant is described as 'B' schedule whereas the land that fell to the share of Anjaiah has been identified as schedule 'C'.

13. The petitioners/A.5, A.6, A.8, A.9, A.10 and A.11 submit that the *de facto* complainant has suppressed about the civil litigations between himself and the petitioners 1 to 5 viz., A.5, A.6, A.8, A.9 and A.11 and the same are decided in favour of the petitioners/accused. The *de facto* complainant filed the complaint by making an attempt to pressurize the petitioners/accused to settle the civil disputes by taking recourse to criminal law. It is further submitted that the 4th petitioner/Kamalavathi/A.9, aged about 70 years, is the mother of the petitioners/A.5, A.6 and A.11 whereas the petitioner/A.6 is her son-in-law and the husband of petitioner/A.5. The 5th petitioner/A.11 is the purchaser of an extent of Ac.1-02.12 guntas of land from out of the schedule lands. It is further submitted that the complaint itself shows the nature of the allegations as civil in nature and that continuance of criminal proceedings is abuse of process of law and therefore the same may be quashed.

14. Learned Counsel appearing for the petitioners/accused has relied upon the following authorities in support of his contention:-

15. In **INDIAN OIL CORPN. V. NEPC INDIA LTD. AND OTHERS (2006) 6 SCC 736** the Supreme Court held at paras 12 and 13 as under:-

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few —Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692), State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194), Central Bureau of Investigation v. Duncans

Agro Industries Ltd. (1996) 5 SCC 591), State of Bihar v. Rajendra Agrawalla(1996) 8 SCC 164), Rajesh Bajaj v. State NCT of Delhi (1999) 3 SCC 259), Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. (2000) 3 SCC 269), Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168), M. Krishnan v. Vijay Singh (2001) 8 SCC 645) and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122). The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

16. While considering the petition filed under Section 482 Cr.P.C., even before the investigation is taken up by the investigating agency, what is all that is required to be seen is as to whether the material available on record and the allegations levelled against the respondents in the First Information Report *prima facie* attract the ingredients of any criminal offences. A roving enquiry or a detailed appreciation of the proposed evidence to be culled out during the course of investigation or trial cannot be taken up and no definite finding about the truthfulness or veracity of the allegations can be determined. What is all that is required is to examine the material on record and see whether the allegations made in the FIR on their face value and if accepted in their entirety would *prima facie* constitute an offence for making out a case against the respondents.

17. Voluminous evidence is placed on record by both the petitioners/accused and the 2nd respondent/*de facto* complainant.

18. About 11 persons are arrayed in the private complaint as said to have committed the alleged offences. The present petition is filed by A.5, A.6, A.8, A.9, A.10 and 11. The specific allegation that is made in the detailed complaint is that the land originally belonged to the father of the 2nd respondent/*de facto* complainant by name Laxmaiah and even though he died on 04-04-1989, the non-petitioners/A.1 to A.4 have fabricated and created two registered sale deeds executed by A.7 under the guise of a false and fictitious GPA in their favour on 11-07-1989. Therefore, apparently, the said GPA cannot be said to be a valid document. It is alleged that no consideration whatsoever was paid to Laxmaiah or the children under the said GPA. The entire transactions thereafter are based on the said GPA which is alleged to have been executed by Laxmaiah in favour of A.1 to A.4. As already stated, the sale deeds are brought into existence after the death of the said Laxmaiah on 04-04-1989. Substantive allegations are made against A.1 to A.4, who are alleged to have brought into existence a fictitious GPA, and thereafter, executed several documents in consequence thereto.

19. Insofar as the petitioners herein are concerned, the allegation is that they have purchased the properties belonging to the *de facto* complainant and his family knowing fully well about the fraudulent nature of the transactions and thereby colluded with the non-petitioners/A.1 to A.4. Hence, they are liable for criminal prosecution.

20. On the other hand, the contention of the petitioners/accused in brief is that admittedly Ac.3.23 guntas of land in Sy.No.25/1/LU belongs to the family of Sailu, who had two sons viz., Anjaiah and Laxmaiah. For the sake of convenience, the petitioners/accused has categorized the entire land as schedule 'A'. It is said that in between the two brothers, the land was divided and each one of them has got half of it and the land that is fell to the share of Laxmaiah, the father of the *de facto* complainant is described as 'B' schedule whereas the land that fell to the share of Anjaiah has been identified as schedule 'C'.

21. Insofar as schedule 'B' is concerned, the contention is that Laxmaiah along with six sons including the 2nd respondent/*de facto complainant* entered into an agreement of sale in favour of one P.Laxminarayana Reddy on 05-12-1980. Thereafter, on 24-09-1981, Laxmaiah along with his children including the 2nd respondent executed an Irrevocable GPA in favour of A.1 to A.4 bearing document No.41/1981. Thereafter, P.Laxminarayana Reddy nominated A.5, A.6 and A.7 and delivered possession thereof to them in the year 1981. On the basis of the Irrevocable GPA, dated 24-09-1981, A.1 to A.4 executed sale deed on 11-07-1989 in favour of petitioners No.1 and 5/A.5 and A.11. Thereafter, certain suits were filed which went in favour of the petitioners/accused in respect of 'B' schedule lands.

22. With regard to 'C' schedule land, the contention of the petitioners/accused is that P.Laxminarayana Reddy entered into agreement of sale in respect of that land on 18-08-1980 and also executed a GPA in favour of A.7. Thereafter, A.7 executed registered sale deed on 11-07-1989 in favour of A.5 and A.6. On 08-12-1989, A.7 died and knowing this fact fully well, the branch of Anjaiah and his family filed a suit with a dishonest intention of grabbing 'C' schedule land.

23. What is evident from the above contention of the petitioners/accused is that the crucial document that establishes a nexus in between the petitioners/accused and the title of the schedule lands is the alleged GPA said to have been executed by all the shareholders. In view of the specific allegation of the *de facto* complainant that not only the registered GPA was obtained fraudulently without any consideration from his father when himself and his brother were minors, the GPA holder have executed the sale deeds under the authority thereof on 11-07-1989 even though the principal executant of the GPA namely P.Laxmaiah died on 04-04-1989 and that is a matter which needs to be investigated and if substantiated, it attracts the penal consequences. It is no doubt true that the dispute between the parties has tapings of civil nature but at the

same time, *prima facie*, there is a specific allegation that the crucial document is the outcome of fraud and forgery. If the investigation establishes that the executant of the alleged GPA died even before the execution of the registered sale deeds, the conclusion that can be deduced is that it is the outcome of cheating. It is the contention of the *de facto* complainant that after the death of the principal who executed the GPA, the GPA holders cannot act on its authority. To that extent, investigation needs to be taken up. Needless to say that if after thorough investigation the investigating agency comes to conclusion that the dispute is purely of civil nature, it is always open to it refer the same as such. Considering the gravity of the allegations, it is felt that a detailed investigation needs to be carried out, which is possible only when investigation into the allegation is made with reference to the documents that need to be produced.

24. In view of the foregoing discussion, it is held that the investigation into the crime cannot be quashed at this stage, as the allegation that the petitioners/accused are alleged to have executed registered sale deeds under the guise of GPA after the death of the principal executant needs to be probed. The investigating agency shall therefore proceed with the investigation, and considering the nature of the investigation required to be made, the custodial interrogation of the petitioners/accused will not arise and hence they should not be arrested. In pursuance to the notices issued by the Investigating Officer, both the parties shall produce the evidence before it and the investigating agency shall proceed in accordance with law.

25. In the result, the Criminal Petition is dismissed and the petitioners/accused need not be arrested for any custodial interrogation in view of the nature of the offence.

Miscellaneous Petitions, if any, pending in this petition shall stand closed.

28th August, 2015
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M.S.K.Jaiswal, J