

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.3543 of 2015

ORDER :

This Criminal Petition is filed by Petitioners/Accused Nos.1 to 10 under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.105 of 2015 of Pedakakani Police Station, Guntur Urban District registered for the offences punishable under Sections 418, 419, 420 read with 34 I.P.C.

2) The crime stated supra is the outcome of a private complaint filed by the 1st respondent K.Sasikala, no other than sister of A-1, dated 05.02.2015 before learned VI Additional Junior Civil Judge, Guntur who referred for investigation to the S.H.O, Peda Kakani under Section 156(3) Cr.P.C by order dated 18.02.2015 resulting in registering the crime. The complaint averments in nutshell, the land in D.No.450 of an extent of Ac.1-75 cents wet of Takkellapadu village, Peda Kakani Mandal, originally belonged to Cherukuri Laxmi Devi who executed a registered gift deed No.143/25 dated 14.01.1925 in favour of Cherukuri Kotaiah who died later as having accepted and taken possession and while enjoying, that after death of Kotaiah it was succeeded by his son Nageswara Rao and Nageswara Rao died intestate in the year 1970 left behind him his wife Kameswari and the children viz., the defacto-complainant K.Sasikala besides one Tara Kumari and A-2 Usha and A-1 Sambasiva Rao whose son and daughter are A-3 and A-4, that after death of Kameswaramma, A-1 while managing the property in collusion with other accused persons including A-5 and A-6 sold the property under registered sale deed No.321/15 in favour of A-7 to A-10 as if his taking undue advantage of umpteen increase in the value of the lands since nearby to the State capital supposed to be

established and that thereby the accused are punishable for the offences supra and sought for referring the case to the police for investigation.

3) No doubt, a perusal of the referring of the private complaint case under Section 156(3) Cr.P.C by the learned Magistrate to police for registering crime and to investigate is not by assigning any reasons; muchless as appears by any judicial application of mind but for simply for mere asking. It is also averred in fact in the complaint that the defacto-complainant already filed O.S. No.548 of 2014 in the civil Court Guntur for partition of the said property and for allotting 1/4th share with division by metes and bounds to her with claim that she is 1/4th shareholder along with her sisters A-2 Tara Kumari and brother A-1 being succeeded from their father Nageswara Rao.

4) From sum and substance of the said private complaint referred and registered as F.I.R by the police referred supra against the accused persons 1 to 10, their contention in seeking to quash the crime proceedings are that it is purely a civil dispute and the defacto-complainant herself executed a notarized affidavit of no claim over the property while it was mortgaging in availing a loan by A-1 from Bank and it tantamounts to relinquishing of any of her rights and thereby the prosecution and continuation of the crime proceedings are nothing but abuse of process. As part of the enclosures in the complaint, the complainant filed plaint copy and temporary injunction application and office copy of legal notice with returned cover and copy of police report given to Peda Kakani police in saying they did not take action and copy of registered sale deed bearing document No.321/15. The accused persons filed so called affidavit of the defacto-complainant, claimed as addressed by her to the Branch Manager of State Bank of India, Uppalapadu, Peda Kakani Mandal

stating that after death of her father, her brother (who is A-1) performed her marriage 33 years back and at the time of her marriage towards Pasupukumkuma she was given her share and there are no any dues to her in the property that is described in the schedule as Ac.0-30 cents out of Ac.1-00 in D.No.217/3, item No.1 and Ac.1-75 cents in D.No.450 of Takkellapadu Village.

5) The defacto-complainant even served with notice filed, failed to attend hereby taken as heard and heard the 2nd respondent-State represented by the Public Prosecutor and the counsel for the petitioners/accused Nos.1 to 10 supra and perused the material on record.

6) No doubt it is the submission by the learned Public Prosecutor that the alleged affidavit does not tantamount to relinquishment and even in the affidavit she did not state about she relinquished any of her property rights that were possessed by her father but for at the time of her marriage she was given as Pasupukumkuma towards her share.

7) No doubt that is a matter to be decided in the pending civil suit from any such contest by A-1 here as 1st defendant. However, the fact remains that the property is sold as that of the A-1 and the plaintiff no other than one of the three sisters of A-1 including A-2 claims that she got share in the property and A-1 sold as if his own of late to A-7 to A-10, the basis for which is her earlier notarized affidavit of no claim over the property given to the Bank where A-1 mortgaged as his and later in turn sold on that basis. Thus, purely it is a civil dispute for no any criminal mind to the sale. It is hardly believable of the offences punishable under Sections 418, 419 and 420 I.P.C being attracted and made out to continue the penal proceedings to prosecute them for nothing of any impersonation

before the Sub-Registrar or there is any element of cheating even he was enjoying the property for her saying by deceiving her in obtaining the affidavit. The affidavit not in dispute by her and she failed to attend to dispute or explain in answer to the quash petition averments if not true.

8) Having regard to the above, it is purely a civil dispute for which civil suit is pending, thereby the criminal prosecution is not sustainable. In addition to that as held by the Apex Court in ***Maksud Saiyed V. State of Gujarat***^[1], that was followed in para 11 of ***Anil Kumar V. M.K.Aiyappa***^[2] and the same affirmed by the three Judges' bench in ***Ramdev Food Products V. State of Gujarat***^[3] and reiterated in ***Priyanka Srivastava V. State of U.P.***^[4] of application of judicial mind is required even to refer under Section 156(3) Cr.P.C a private complaint for police investigation by consideration of the facts of the case on hand and the order though not a detailed one expresses the views of Magistrate, not suffice of mere statement of his gone through the complaint, documents and heard complainant, unless same by judicial application of mind reflects in the order, for setting aside such an order.

9) Accordingly and in the result, the Criminal Petition is allowed and all the proceedings in Crime No.105 of 2015 of Pedakakani Police Station, Guntur Urban District are quashed. The bail bonds of the petitioners/accused 1 to 10, if any, shall stand cancelled. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

15.09.2015

NOTE: L.R. Copy to be marked - Yes
(b/o) ksh

[\[1\]](#) (2008)5 SCC 668

[\[2\]](#) (2013)10 SCC 705

[\[3\]](#) (2015)6 SCC 439

[\[4\]](#) (2015)6 SCC 287