

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8384 OF 2015

ORDER:

The petitioners are A.4 and A.5 of Crime No.100 of 2015 of P.S. Zaheerabad Town, Medak District. The 2nd respondent is the *de facto* complainant. The crime registered for the offence under Sections 419, 420, 467, 468 read with Section 109 of the Indian Penal Code, 1860. It is out come of the private complaint filed by the *de facto* complainant dated 15.04.2015 and the learned Magistrate referred the said complaint under Section 156(3) of the Code of Criminal Procedure, 1973 to the Station House Officer, Zaheerabad Town, to register the crime and to investigate.

02. The petitioners are A.4 and A.5 among the five accused persons. The averments in the complaint reads in nutshell in setting the law in motion that the *de facto* complainant – 2nd respondent herein is absolute owner, pattadar and possessor of the agricultural land in S.No.53/ -6 of Ac.2.11 gts., and S.No.53/ -3 of Ac.2.06 gts., total Ac.4.17 gts., of Kothur-D Village, Kohir Mandal, Medak District. In 1992 the complainant purchased the said land under registered sale deed No.1785/92 dated 26.06.1992 from one Jamalpur Kishanlal s/o. Mallaji resident of Hyderabad. Since then she is in possession and enjoyment of the property as owner and pattadar and the lands are mutated in her name in the revenue records and also she was issued pattadar passbook and title deed bearing No.Y-33763 by the revenue authorities, that by the time of sale deed, the *de facto* complainant was residing at Kacheeguda Nimboli Adda, Hyderabad 27 and presently she is residing at Goshamahal Joshiwadi, Hyderabad. It is further averred that after purchase of the land, she raised wire fencing with fencing stones around the said land and constructed two rooms for labour and watchmen. She is cultivating the said land and raising dry crops. The said land is abutting to NH9, which is towards south (northern side of the said land), that while so 6 or 7 months back the complainant came to know that the National Highway Authorities acquired such adjacent lands for road widening and part of the complainant's land also under acquisition, that due to ill health of her son, she could not approach Revenue Divisional Officer – Land Acquisition Officer, Sangareddy, so also her husband with regard to claiming compensation over the land for his business preoccupation and also in the month of March 2015, the complainant approached Land Acquisition Officer, Sanga Reddy, for payment of compensation

for acquisition of the land belongs to her. She came to know that these accused persons are trying to withdraw the compensation amount with the forged, false and fabricated documents. Having suspected their mischief, she approached the Sub Registrar Office, Zaheerabad on 12.03.2015 and on enquiry came to know that A.1 got executed registered sale agreement cum GPA vide document No.3599/2010 dated 26.06.2010 registered at Zaheerabad Sub-Registrar's Office in his favour as is executed by some other by impersonating the *de facto* complainant, forging the thumb impression of the *de facto* complainant and the photograph affixed on the agreement of sale-cum-GPA, therein at page 6 in vendors column of some third party and not of the complainant and even the thumb impression in the above GPA does not belong to her and those are forged and she never sold the said land, neither received the sale consideration from A.1 nor she executed GPA in his favour and A.2 and A.3, falsely identified the alleged vendor as owner of the said land and signed as identifying witness in the said document in collusion with A.1. Thus A.1, in connivance with A.2 and A.3, impersonated and cheated the complainant and created forged and fabricated the document in cheating the complainant behind her back with dishonest intention to have wrongful gain and without any right or title over the property. She further averred that subsequently on the strength of the GPA, A.1 sold the above land to A.4 under registered sale deed document No.6069/2011 dated 01.12.2011 registered on 03.12.2011 before the Sub Registrar Office, Zaheerabad, and A.4 purchased the land knowingly that A.1 has no right or title and without verifying the title and subsequently, A.4 got fabricated false revenue records and sold the land in favour of A.5 under registered sale deed 17/2014 dated 02.01.2014 before the Sub- Registrar Office, Zaheerabad, without any right or title. Thus accused persons created the forged and false document to have wrongful gain and to defeat the right of the complainant behind her back and thereby committed offence supra. Hence, she approached the Sub-Inspector of Zaheerabad and gave complaint on 02.01.2014, however, police advised her to approach the court and did not receive. Hence to take action.

03. There are 8 enclosures as list of documents to the private complaint i.e. Xerox copy of Registered sale deed document No.1786/1992 dated 26.06.1992, Xerox copy of Pattadar Pass book No.Y-33763 in the name of the complainant, Xerox copy of Title deed book No.Y-33763 in the name of the complainant, Xerox copy of the certified copy of registered agreement of sale cum GPA document No.3599/2010,

dated 26.06.2010 (false and forged document), Xerox copy of certified copy of Registered sale deed document No.6069/2011 dated 01.12.2011 (false and fabricated document), Xerox copy of registered sale deed document No.17/2014 dated 02.01.2014 (false and fabricated document), Xerox copy of Ration card of complaint, Xerox copy of Adhar card of the complainant.

04. The order of the learned Magistrate referring the complaint to the police under Section 156(3) Cr.P.C. on 15.04.2015 reads that the original complaint of U. Padma for the offence under Sections 419, 420, 467, 468 read with 109 I.P.C. being transmitted for investigation and report under Section 156(3) Cr.P.C.

05. A perusal of the said endorsement of the learned Magistrate in transmitting the private complaint for police investigation shows there is no reasons assigned much less referred in the complaint, atleast in brevity, to consider for referring to the police for investigation even the complainant sought for taking cognizance on the private complaint.

06. Pursuant to which, the above crime is registered and it is pending. It is to quash the same so far as the petitioners - A.4 and A.5, they filed the present application.

07. The contentions are that the petitioners – A.4 and A.5 not committed any offence as alleged by the *de facto* complainant and they are innocent and falsely implicated and the learned Magistrate did not apply his mind as to complicity of the petitioners in the crime while referring the complaint to the police investigation as it is very case that the GPA is forged and fabricated, for which none of the petitioners - A.4 and A.5 are parties in privy even from the very complaint, but for A.1 if at all with A.2 and A.3 attestors and identifying witnesses and there is nothing to show the knowledge to A.4 and A.5 so far as so called GPA concerned and A.4 in turn A.5 are the bonafide purchasers for consideration and they are given pattadar pass books and title deeds and their names entered into revenue records and one J.Kishanlal, who is the vendor of 2nd respondent field O.S. No.158 of 2012 before the in VII Additional District Court, Medak, at Sangareddy, against A.1, Md. Sayeed, one Abdul Rasheed and the *de facto* complainant - U. Padma Bai and the same is settled in Lok Adalath in case No.279 of 2013 dated 08.07.2013 and the 2nd respondent – vendor, the plaintiff therein agreed that the first petitioner - A.1 is the owner of the suit schedule property i.e. Sy.No. 53 admeasuring Ac.2.11 gts., and in Sy.No.53/A-3 admeasuring Ac.2.06gts., total Ac.4.17 gts., situated at Kothur-D Village, Kohir Mandal, Medak

District, and that Abdul Rasheed and the de facto complainant - U. Padma Bai agreed therein by which they have no right over the property. Basing on the Lok Adalath settlement, dated 08.07.2013, the first petitioner i.e. A.4 herein sold the property in favour of the 2nd petitioner – A.5 under registered sale deed dated 02.02.2014 vide document No.17 of 2014 and therefrom there is nothing to show that the sale is without any right or title or the power of attorney-cum-sale agreement in favour of A.1 by the vendor is without any iota of right and thereby the crime proceedings are liable to be quashed.

08. Learned counsel for the petitioners placing reliance on the expression of the Apex Court reported in **Mohammed Ibrahim and others v. State of Bihar and another** and in **State of Karnataka and another v. Pastor P. Raju**

09. The 2nd respondent - *de facto* complainant appeared through advocate and filed counter. Page 2 of the annexure to counter contain statement recorded under Section 164 Cr.P.C. Statement last 5th line at best contains only an allegation against A.4 and not even against A.5. So A.5 is the vendee from A.4 in January 2014 as referred supra under registered document No.17 of 2014, that too it is subsequent to the Lok Adalaath settlement referred supra dated 08.07.2013 Lok Adalath case No.279 of 2013 of the civil suit between J. Kishanlal and A.1, one Abdul Rasheed and the *de facto* complainant and the Lok Adalath award clearly speaks among the three defendants and the plaintiff, and the 3rd defendants i.e. *de facto* complainant has been categorically stated that Ac.4.17 gts., covered by the property in dispute, that petitioner or his legal heirs have no right, title over the schedule property and the plaintiff and first defendant i.e. A.1 compromised in their presence and he is the owner of the property being the pattadar, that the defendants 2 and 3 including *de facto* complainant supra admitted the sale transactions in favour of them respectively and the plaintiff admits the same and referred registered sale deed dated 26.06.1992 as true, which is a private complaint document No.1 in favour of the *de facto* complainant and also admitted the registered document dated 26.06.2010 i.e. the complainant enclosed document No.4 sale agreement-cum-GPA in favour of A.1 herein and also registered document dated 01.12.2011 i.e. document No.5 of the complainant sale deed in favour of A.4 obtained from A.1 pursuant to the GPA. Thus therefrom even once the document of title in relating to the A.1 and A.4 are admitted by the *de facto* complainant and third defendant in the

suit filed by the father of A.1 as plaintiff showing as A.1 and the first defendant, it is difficult to sustain the criminal prosecution from the present private complaint of the *de facto* complainant dated 15.04.2015.

10. Having regard to the above, the criminal proceedings are liable to be quashed without prejudice to any claim of civil remedy to the *de facto* complainant.

11. Accordingly, and in the result, the criminal petition is allowed.

12. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19.11.2015

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