

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7954 of 2014

ORDER :

The petitioner is sole accused in Crime No.167 of 2014 of Chityal Police Station, Nalgonda District registered for the offences punishable under Sections 420, 423, 447, 427 IPC. It is in fact a private complaint filed before the Judicial First Class Magistrate, Ramannapet, where the learned Magistrate referred the private complaint under Section 156 (3) Cr.P.C in registering the above Crime dated 21.06.2014.

2) No doubt, the reference of the learned Magistrate under Section 156 (3) Cr.P.C, which is filed before the Court to verify whether there is any judicial application of mind supporting by any reasons even hardly for referring the complaint. On a total reading of the complaint by the Court in quash petition, leave about other material, indicates there is nothing of any judicial application of mind that is required by law including from the expressions of the Apex Court prevailing as on date for referring the said private complaint dated 17.06.2014, to the police for investigation only after going through the contents and satisfaction of locus standi and making out a cognizable offence to register the crime by police to investigate and the same is lacking herein leave about not even reflecting from reference order of the Magistrate.

3) Leave it as it is, even taken for arguments sake, the Magistrate in making the reference to direct the police for registering the crime and take up investigation, applied judicial mind from any prima facie accusation of cognizable office. So far as the offences concerned supra, it is not the complaint filed by original complainant. It is by a so-called GPA holder, by name, S.Jaipal Reddy on behalf of the complainant, who filed the private complaint. The so-called GPA is one of the material document in page No.16. On reading of para No.2 of the GPA, it is clear that the power of attorney is not given to

file any criminal complaint. It is only for civil proceeding even for civil proceeding the executant of the power or attorney i.e., Muppa Narender Reddy—GPA holder categorically mentioned that he did not delegate the power to sign or prepare the pleadings but simply to file a civil pleading. When such is the case, practically there is no power of attorney to maintain the complaint by the so-called GPA holder for the Magistrate to take cognizance or refer to police for registering the crime with no locus standi. Once there is no power of attorney and the so-called power of attorney filed the criminal complaint that was also adverted by the learned Magistrate in referring the complaint, once there is no locus standi, the crime proceedings are liable to be quashed on that ground alone. Leave it as it is, even coming to the merits of the so-called offences, undisputedly Muppa Ram Reddy got the only son by name Manohar Reddy. Manohar Reddy and Narender Reddy have now roped by GPA holder Jaipal Reddy supra. Ramreddy executed the GPA in favour of his son Manohar Reddy on 14.12.1992. Ramreddy later undisputedly died on 10.02.2012. In the life time of Ram Reddy, he did not cancel the GPA. Manohar Reddy being the GPA holder on behalf of his father—Ram Reddy and also for himself executed GPA cum contract for sale in favour of M.Pandu on 29.12.2001. During life time of Ramreddy is also not in dispute. It is to show from the said GPA-cum-contract for sale at page No.19 of the material papers, comes to 2nd page of the agreement of sale cum GPA, it is referred 1st vendor is father of 2nd vendor and 2nd vendor is only son of 1st vendor. The vendors 1 and 2 are joint owners and possessors of the property. The deed of agreement of sale cum GPA executed on 29th December, 2001, speaks the entire consideration for the contract for sale cum GPA received by the vendors supra. It is covenanted that, the possession of the property shall be delivered at the time of regular sale deed or deeds to purchaser as per para No.4 of the contract for sale cum GPA. However, that is not the be all and end all for the reason, among para Nos.11 to 13 and particularly at para No.13, it is clearly mentioned that further authorized to complete the

sale of the property shown in the schedule and hand over the possession of said property to the sub-purchaser or purchasers, taking possession from the vendors itself. It is undisputedly, the GPA holder pursuant to the GPA referred supra of December, 2001, on behalf of the principal he can deliver possession of the property to vendee at the time of registration of the sale deed. Once the further covenant subsequent prevails over the earlier covenant supra of the agreement cum GPA, the property appears to have been cause mutated therefrom in favour of the agreement of sale cum GPA holder i.e., M.Pandu (vendee) and the same was entered in revenue Adangals/ pahani in the name of M.Pandu for the year 2007-08 and 2008-09. It is undisputedly, on 15.11.2011, the GPA holder—M.Pandu, pursuant to the power of attorney cum sale agreement executed by M.Manohar Reddy for him and also as power of attorney holder of his father on 14.12.1992, vide registered document No.2562 of 1992, executed the registered sale deed document No.14231 of 2011 and also acknowledged delivery of possession already made and it is supported by reasons assigned also.

4) It is in the factual back ground claiming that the accused supra committed the offences, the private complaint was filed and the learned Magistrate simply referred the same without application of judicial mind and without even locus standi to the so-called GPA holder of original party to the complaint to file the complaint with the averments.

5) At page No.5 of the sale deed dated 15.06.2011, last but one para shows the GPA holder declare that 1) M.Manohar Reddy, 2) M.Ram Reddy are presently alive and AGPA No.9189 of 2001, is still in force.

6) However, a perusal of para No.4 in the private complaint shows that there is no whisper to attribute any knowledge to said M.Pandu, GPA holder cum agreement of sale in December, 2001 pursuant to the GPA dated 14.12.1992, that was executed in favour of M.Pandu by Manohar Reddy for himself and on behalf of his father

Ramreddy referring to the GPA and even admittedly, Ram Reddy was alive but in February, 2012 shown died; in the absence of attributing the complaint averment to said Pandu the accused thereto by any some stray sentence of he got knowledge of death of Ramreddy, it is hardly believable to sustain the complaint for referring to police for investigation, for the police to register the crime. It is not even by exchange of notices or any cancellation of GPA much less by Ram Reddy before February, 2012 in favour of his son—Manohar Reddy or even Manohar Reddy still alive as on today much less even by the complainant Narender Reddy, S/o.Manohar Reddy.

7) When such is the case, there is nothing even to show any offence of cheating made out, once possession is from the very complainant shown with accused, where is the question of taking cognizance of trespass or the offence of mischief under Section 427 IPC and also for nothing made out of any offence under Section 420 IPC, much less makes out of any offence under Section 423 IPC to sustain the complaint.

8) It is clear therefrom that the learned Magistrate did not apply his mind judiciously to the complaint contents even much less to the contents of enclosures to the complaint before referring to police for investigation. Thereby the FIR proceedings are liable to be quashed. Even it is to say from the lengthy argument submitted by counsel for petitioners referring to Section 202 of Indian Contract Act particularly illustration No.1 that, even GPA holder died once there is GPA cum sale agreement cum power of attorney executed, even by death of executant the GPA will not cease its force from involvement of 'interest' used in Section 202 of Contract Act in co-relation to the word 'interest' used in 53-A of Transfer of Property Act, as per the expression of **Harbas Singh vs Shanti Devi** which referred to several expressions including **Suraj Lamp and Industries Pvt. Ltd vs State of Haryana and another**. Further the counsel also placed reliance on the expression of the Apex Court in **Annamalai vs State of Karnataka** in relation to the ingredients required to constitute the offence of cheating where at para nos.17 to 27 referring several

expressions spelt out the ingredients required to constitute the offence of cheating under Section 415 IPC and what is meant of dishonestly and fraudulently under Sections 24 and 25 IPC, mainly referring to ***Uma Shankar Gopalika vs State of Bihar*** para No.6, which reads thus:

“ It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception.

If the intention to cheat has developed later on, the same cannot amount to cheating, suffice to say the FIR is liable to be quashed.

9) Accordingly, the Criminal Petition is allowed and all the proceedings relating to Crime No.167 of 2014 of Chityala Police Station, Nalgonda District, is quashed. The bail bonds of the petitioner/ accused, if any, shall stand cancelled.

10) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

07.11.2015

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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