

**HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

CRIMINAL PETITION No.8795 of 2015

ORDER :

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') by the petitioner/A.1 to quash the proceedings against him in C.C.No.209 of 2015 pending on the file of the Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Kadapa, YSR District.

2. The 1st respondent-complainant filed a private complaint alleging that the one Munaga Subbarathnamma, who is plaintiff No.1 in O.S.No.25 of 2002 on the file of the IV Additional District Judge, Kadapa, is his aunt and he is legatee under the Will dated 10.06.1995 allegedly executed by Subbarathnamma bequeathing the scheduled property in his favour, whereas accused Nos.2 to 4 set up a Will claiming absolute rights over the suit scheduled property. After the death of Subbarathnamma, the 1st respondent came on record as a legatee under the Will to prosecute further proceedings in the suit, claiming absolute rights in the scheduled property.

3. The 1st respondent himself is the attestor of the Will allegedly executed in favour of A.2 to A.4 by the husband of Subbarathnamma on 10.06.1995. Now the 1st

respondent's contention is that the Will is a forged document created by the petitioner/A.1, A.2 to A.4. During pendency of the suit, the Will was referred to private hand writing expert and gave opinion that the signature of the testator on the Will is forged. Thereupon, A.2 to A.4, who are defendants in the suit, filed an application to refer the disputed signatures on the document along with admitted signatures of the testator-husband of Subbarathnamma to Government expert. Accordingly, the IV Additional District Judge, Kadapa, referred the admitted signatures along with the disputed signatures on the Will to the Government expert for opinion. Government Hand writing expert opined that the signatures of the attesor i.e., 1st respondent herein is original and whereas the signature of the testor was forged.

4. On the basis of opinion issued by the private hand writing expert, the 1st respondent filed the present complaint as if the petitioner herein along with A.2 to A.4, who are plaintiffs in O.S.No.25 of 2002, forged the signature of testor-husband of Subbarathnamma with an intention to grab the property.

5. The dispute with regard to the execution of the Will is the subject matter of O.S.No.25 of 2002 on the file of the IV Additional District Judge, Kadapa. The basis for filing of this complaint is opinion of private hand writing expert. If the 2nd opinion given by the hand writing expert-APFSL

is taken into consideration, the 1st respondent is also a party because he attested the Will as one of the attestors. But, taking advantage of the Will executed by Subbarathnamma in his favour, he filed the present case. For any reason, the criminal court proceeds to try the C.C. against the petitioner herein, who is not a party to the said suit, it will have its own impact on O.S.No.25 of 2002. The 1st respondent, who signed on the Will as an attestator as if he saw signing of the Will by the testator within the meaning of Section 3 of the Transfer of Property Act. In such case, he is also privy to the forgery and he cannot now contend that the Will is forged. Filing of such complaint is nothing but an abuse of process of law. Therefore, taking into consideration of the facts and circumstances and pendency of the civil suit, where the rights of the parties required to be decided, the criminal proceedings by filing a private complaint by the 1st respondent is liable to quashed, since, filing of private complaint is nothing but an abuse of process of law.

6. Accordingly, the criminal petition is allowed and all the proceedings relating to C.C.No.209 of 2015 on the file of the Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Kadapa, YSR District, are quashed against the petitioner/A.1. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

14th October 2015.

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