

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.P.No.10258 of 2014

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to quash the proceedings in C.C.No.371 of 2011 on the file of Judicial First Class Magistrate at Kodad, Nalgonda District, registered for the offences punishable under Sections 420, 468 r/w 34 IPC.

2. The main ground urged before this Court is that the allegations made in the charge sheet and the statements recorded under Section 161(3) of Cr.P.C., even if they are taken at their face value and accepted in their entirety, would not constitute any offences punishable under Sections 420, 468 r/w 34 IPC.

3. Sri C. Prakash Reddy, learned counsel for petitioners drawn the attention of this Court to second para of page No.3 of the Charge sheet, which contained an allegation regarding the offence allegedly committed by A.2 and A.3. Whereas, the learned counsel for respondent also drawn the attention of this Court to the same para.

4. For the limited purpose of deciding whether the allegations made in the charge sheet would constitute offences punishable under Sections 420, 468 r/w 34 IPC, it is apposite to extract the relevant para in the charge sheet and it is extracted hereunder for better appreciation:

"It is submitted that after the death of the grand father of the complainant Sonti Giriraju, the A.1/Sonti Arun Kumar, who is one fo the son of Sonti Giriraju with a mollified intention to deprive the legimate share to his other brothers and sisters, had fabricated certain documents including the pattadar passbooks and title deeds in respect of the above said land for his wrongful gain and thereby got mutated his name in the revenue records in the pattadar and

possessor columns. The A.1 in order to cover his latches had executed a registered Gift Settlement Deeds in favour of his own daughters i.e, A.2-Pamarthi Arundhathi and A.3-Kalal Dharam Vide document No.4980 of 2009 and Doc.No.4981 of 209 dt. 23.10.2009 on the file of Sub Registrar, Kodad”.

5. As seen from the allegations made in the charge sheet, the act committed by A.2 and A.3 is the acceptance of Gift Settlement Deeds executed by their father. Section 122 of Transfer of Property Act(for short ‘TP Act’) defines ‘Gift’, it is transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of donee. In the same Section, how the acceptance is to be made is stated and according to it, such acceptance may be made during the life time of the donar while he is still capable of giving. Thus, the act done by the petitioners, at best, amounts to acceptance of Gift under Section 122 of T.P.Act. The offence allegedly committed by the petitioners is punishable under Section 420 of IPC, for cheating or dishonestly inducing delivery of property under Section 415 IPC.

6. The word ‘Cheating’ defines under Section 415 IPC as follows; “whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘Cheat”.

7. Here, the act committed by the petitioners is only acceptance of Gift, as required under Section 122 of T.P. Act, but such act would not amount to inducing a person to do or not to do and that a dishonest intention, which would cause damage or harm to that person in body, mind, reputation or property etc., At best, such Gift, if the donor has no capacity to execute the Gift and convey the same, it can be avoided and still the *de facto* complainant being legal heir can claim her share by impleading them as party in a civil suit or in appropriate proceedings. But such acceptance of Gift would not constitute an offence punishable under Section 420 IPC or if Section 468 of Indian Penal Code.

8. The Court can exercise its jurisdiction under Section 482 Cr.P.C. only to give effect to an order under the Code of Criminal Procedure or to prevent abuse of process of the Court and to secure ends of justice. While exercising jurisdiction, the Court is required to confine to the allegations made in the charge sheet, which include the documents and other materials, produced along with the charge sheet before the Court and even in the statements recorded by the Investigating Agency under Section 161 (3) of Cr.P.C.. There is any allegation that these two petitioners accepted the Gift executed by A.1, executed by their father, they did not specifically played any role in obtaining Gift Settlement Deeds, referred above.

9. The Apex Court in State of **Haryana Vs. Bhajanlal and others**¹ laid certain guidelines and Guideline Nos. 1,5 and 7 are relevant for the purpose of deciding the present issue and

¹ 1992 Supp(1) SCC 355

according to the Judgement of Apex Court, this Court can exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings where the allegations made in the FIR or 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 a case against the accused.

10. Similarly, as per Guideline No.5 where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. As per Guideline No.7; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. Therefore, in view of the guidelines laid down by the Apex Court in **Bhajanlal's** case, this Court can exercise jurisdiction only to prevent abuse of process of the Court or whether the allegations made in the charge sheet, even if they are taken at their face value and accepted in their entirety, do not *prima facie* would not constitute any offence.

12. In **State of Karnata v. L. Muniswamy**², the Apex Court held that in exercise of the wholesome power u/s 482 of the Act 2 of 1974 (s. 561 of 1898 Code), the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the

² AIR 1977 SC 1489

Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

13. Thus, in view of the principle, this Court can exercise its jurisdiction under Section 482 Cr.P.C when the prosecution launched with a *mala fide* intention by abusing process of the Court. Here, the allegations made in the complaint would not constitute any offence and the *de facto* complainant, who is claiming share in the property, instead of approaching the Court for partition of her share of the property, filed this complaint to wreck vengeance against the petitioners. In these circumstances, the Criminal prosecution cannot be permitted to be used as a weapon to wreck vengeance against the petitioners, who did not

commit any offence on the face value of the allegations made in the charge sheet.

14. Therefore, taking into consideration the facts and circumstances of the case, I find that the prosecution launched against the petitioners only to wreck vengeance against them by abusing the process of the law and the allegations made in the charge sheet on their face value would not constitute any offence and thereby the proceedings in C.C.No.371 of 2011 on the file of Judicial First Class Magistrate at Kodad, Nalgonda District, are liable to be quashed.

15. Accordingly, this Criminal Petition is allowed quashing the proceedings in C.C.No.371 of 2011 on the file of Judicial First Class Magistrate at Kodad, Nalgonda District.

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

M. SATYANARAYANA MURTHY, J

November 22, 2016.

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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



Crl.P.No.10258 OF 2016

Dt.22.11.2016

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