

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION Nos.659, 662, 663, 664 & 666 OF 2015

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COMMON ORDER:

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Criminal Petition Nos.659, 662, 663, 664 and 666 of 2015 are filed under Section 482 Cr.P.C. seeking to quash the order, dated 22.1.2015, in CrI.M.P.Nos.2196, 2199, 2195, 2197 and 2198 of 2014 in C.C.Nos.63, 66, 62, 64 and 65 of 2014 on the file of the IV Special Magistrate at Hyderabad.

2. Since the parties and the issue involved in all these petitions are one and the same, these Criminal Petitions are being disposed of by way of this common order.

3. Heard and perused the material available on record.

4. The offence alleged against the petitioner is punishable under Section 138 of the Negotiable Instruments Act, 1881.

5. The petitioner/accused intends to file xerox copy of an agreement of sale, dated 28.1.2009, entered into between herself and respondent No.2 where she agreed to sell part of open land admeasuring 1600 Sq.yards out of total Ac.1.30 guntas situated at Hydernagar Village under GHMC, Kukatpally Circle, Balanagar Mandal, Ranga Reddy District. Hence, she filed the aforementioned miscellaneous petitions for marking the said agreement of sale as a document and the same were dismissed. Challenging the same, she filed the present Criminal Petitions.

6. Learned counsel for the petitioner contended that the said document can be marked as evidence before the trial Court subject to admissibility and also veracity of the document; that mere marking of

the document itself will not give any evidentiary value and it is for the trial Court to decide as to whether the said document is admissible or not basing on the issues and the facts and circumstances of the case.

7. Admittedly, in the impugned orders, the learned trial Judge observed at para Nos.4 and 5 as follows:

"4. The fact that the petition so filed before the court U/s.65,66 of the Indian Evidence Act does not bear the signature of the accused speaks that perhaps the very accused is ignorant and unaware of creation and filing of such a document before the Court by the vested interests. It is the case of the complainant that there was no such transaction as to sale and purchase of any land between the accused and complainant. Further, it is a contention of the respondent/complainant that there was being no agreement entered inter-se by the complainant and accused as such the question of admission as to existence of any such non existent document by the complainant does not arise admittedly no such document did ever exist as such the question of production of the so called Xerox copy of such non existent document to be created as secondary evidence does not arise.

5. The advocate for respondent/complainant argued that the proposition so propounded as to the admission of Xerox copies of such non existent forged and fabricated document and receiving it as secondary evidence is untenable both in law and facts. It appears to be the brain child of a person or persons who have embarked to produce such document before the court and it tantamounts to misleading the court both on question of law and fact. The accused herself having denied and disowned the existence of any such document in her very evidence before the Court it would be absurd to assume that there could be existence of a Xerox copy of such non existent document. The respondent/complainant denied the very existence of the agreement between the parties. Further respondent/complainant pleads that it is a forged and fabricated document."

The said observation also clearly indicates that the learned Magistrate is of the view that the document in question is subject to the objections of respondent No.2/complainant and also the evidentiary value in accordance with law. Considering the same, these Criminal Petitions are disposed of with the following direction:

The trial Court is directed to allow the petitioner to produce the xerox copy of the document in question subject to the objection of

respondent No.2/complainant and also decide the issue in accordance with law.

8. Miscellaneous petitions pending, if any, in these Criminal Petitions shall stand closed.

JUSTICE RAJA ELANGO

4.4.2016
AMD

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Date:4.4.2016

AMD