

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No. 733 of 2016

ORDER:

Heard Sri B.K.Subba Rao, appearing in person for the petitioner; Sri Ramakrishna, Advocate appearing for the respondents 2 and 3 and the learned Additional Public Prosecutor for first respondent/State.

The present Criminal Petition is filed under Section 439(2) Cr.P.C., seeking to recall the order dated 06.04.2015 passed in CrI.P.No.2620 of 2015 granting anticipatory bail to the respondents 2 and 3 herein.

By an order dated 06.04.2015 in Criminal Petition No.2620 of 2015, this Court granted anticipatory bail to the petitioners therein i.e., A-2 and A-3 in Crime No.26 of 2015 of Vetapalem Police Station, registered against them and another for the offences punishable under Sections 379, 424, 427, 451 read with 34 IPC. It was a case where a private complaint filed under Section 200 Cr.P.C., was referred to police under Section 156(3) Cr.P.C. The averments in the report show that the informant who is the petitioner herein, along with his brother is in possession and enjoyment of the property bearing Dr.No.8-95 of Pandilapalli village which was acquired through a registered Will bearing document No.8 of 1972 executed by his father by name B.K.Nagaiah. The averments in the report further show that as per the Will, the tiled house and the land in which the tiled house existed should be taken by the petitioner herein and by his elder brother by name B.Venkateswarlu. It is alleged that till date they have not partitioned the tiled house property and kept it as a joint property. While things stood thus, the elder brother of the petitioner passed away and consequently his wife and children succeeded to enjoy one half of the said property. The petitioner desires to construct a library for public use, which was known to one and all in the village. In the meantime they have let out the said house to a poor widow by name Pinjala Suseela, who was having small children at that point of time, on a nominal rent. Due to pre-occupation of the petitioner with his profession, the task of constructing the library was getting postponed. Under those circumstances the poor widow requested the petitioner and the heirs of deceased-brother to sell the said house to them as they have no other place to live. Accordingly, they have agreed to sell the house to her for a nominal amount. In this connection, the petitioner appointed Gutti Chandramouli, who is brother-in-law of the petitioner's deceased-brother, to collect the rents from the poor widow and participate on his behalf in negotiations to sell the house to the said lady. They have been representing to the petitioner and to the heirs of his elder brother that the house will be sold to the poor lady only. After the death of G.Chandramouli his son G.Prasad was pursuing the matter. About 10 months prior to the date of lodging of the report, the said G.Prasad made a phone call to the petitioner herein representing that he has prepared a sale deed in favour of the poor lady and asked the petitioner to sign on the said document. During the first week of March 2015,

the petitioner came down to Hasthinapuram went to Vetapalem on 03.03.2015 and during the said period, the said G.Prasad (A-1) approached him and requested the petitioner to sign on the said document. While going through the document, the petitioner noticed that the property was not sold to Pinjala Suseela but to be sold to one Perika Varalaxmi. When the same was questioned, G.Prasad (A-1) produced some Xerox copies to show that the originals were handedover to P.Varalaxmi. On the next day i.e., on 04.03.2015 he along with his wife went to Pandillapalli and found that the tiled house was demolished and entire household articles were taken away. His enquiry with the neighbours reveal that the tiled house was demolished by P.Varalaxmi (A-2) and P.Laxman Bapuji (A-3) husband of A-2 in the month of February 2015. When enquired with A-2 and A-3 they seems to have informed that on the instructions of A-1 they have demolished the house. The fact of demolition of the house was also alleged to have been confirmed by the villagers. Basing on these allegations, the above report came to be lodged.

After taking into consideration the fact that the respondents 2 and 3 herein, who are A-2 and A-3, acted on the instructions of A-1 and since A-1 was already granted bail, this Court considered the request of A-2 and A-3 and granted anticipatory bail to them on certain terms and conditions.

The present application came to be filed on the ground that the said order was obtained by mis-representation of facts and also by misleading and misguiding the court.

The petitioner who appeared in-person placed on record three judgments of the Apex Court reported in **A.V.Papayya Sastry and others v. Government of A.P., and others**^[1], **S.P. Chengalvaraya Naidu (dead) by L.Rs., v. Jagannath (dead) by L.Rs. and others**^[2] and **Indian Bank v. Satyam Fibres (India) Pvt. Ltd.**^[3] to show that any order, judgment or decree obtained by playing fraud on the court, has to be treated as a nullity and *non-est* in the eye of the law, whether such order, judgment or decree by the Court of first instance or by the final court. There is no dispute with regard to proposition of law canvassed by the petitioner, who is appearing in person. It is well established principle of law that fraud avoids all judicial acts, ecclesiastical or temporal. Therefore, if any judgment or order is obtained by playing fraud on the Court, Tribunal or authority is a nullity and *non-est* in the eye of the law. It is also not in dispute that the same can be challenged in any court at any time, in appeal, revision, writ or even in collateral proceedings.

But the question is whether there was any fraud or any misrepresentation made before this Court while passing the order?

Admittedly, the present application came to be filed seeking cancellation of bail granted to A-2 and A-3. No application is filed either before this Court or before the Sessions Court seeking cancellation of regular bail granted to A-1. A perusal of the order granting bail to A-1 shows that his request was considered on the ground that entire investigation was

over except filing of charge-sheet. It was also held by the trial court that no prejudice will be caused to the prosecution case in any manner if A-1 is released on bail.

A reading of the first information report, which has been lodged by the petitioner, *prima facie* shows that A-1 tried to deceive him by asking him to sign on a document wherein the property was sought to be sold to one P.Varalaxmi instead of to P.Suseela. The averments in the said report reveals that the enquiries made by the petitioner with A-2 and A-3 and also with the neighbours show that A-2 and A-3 demolished the tiled house on the instructions of A-1. The said averments were reflected in the order granting anticipatory bail. It is not the case of the petitioner that the respondents 2 and 3 here have violated any of the conditions of bail or that they have tampered with the evidence or interfered with the investigation by the police. As observed earlier, the petitioner seeks cancellation of bail on the ground of alleged fraud. In support of the same, he places reliance on the affidavits filed by one Bellamkonda Chinna Ankulu and Pinjala Veera Nageswara Rao to show that the contents of the order are incorrect and that a false representation was made before the Court while obtaining anticipatory bail. It is to be noted that these affidavits are not part of case diary. The 161 Cr.P.C., statements of these two witnesses which are placed on record by the learned counsel for the petitioner speak something else. Infact it is to be noted that sworn affidavits of these two persons came to be obtained much after the order of anticipatory bail is passed by this Court. As stated earlier, this Court granted anticipatory bail on 06.04.2015, whereas these two affidavits which are now filed along with this application are dated 08.11.2015. Definitely, these two affidavits cannot form a basis for cancelling the bail on the ground that there was any misrepresentation before the Court while granting anticipatory bail. In fact it is to be noted that subsequent to the order granting anticipatory bail, the State filed Criminal Petition No.9799 of 2015 seeking cancellation of the bail to these two respondents. By an order dated 05.10.2015 this Court rejected the request holding that any observations made in the order while granting bail will not cause any effect while framing of charge or during the trial. Without challenging either the order passed in CrI.P.No.2620 of 2015 or the order passed in CrI.P.No.9799 of 2015, the present application came to be filed at the instance of the informant.

As observed earlier, the application filed for cancellation of bail does not anywhere show that the respondents have violated any of the conditions of the bail. The 161 Cr.P.C. statement of Bellamkonda Chinna Ankulu shows that on the representation made by G.Prasad that the property has been purchased from the petitioner herein, they have accepted to demolish the tiled house and took away the sticks for using the same as firewood. The 161 Cr.P.C. statement of Pinjala Veera Nageswara Rao toe in line with what has been mentioned in the first information report by the petitioner. As per the said statements, the petitioner herein agreed to sell the property to P.Suseela, but however, A-1 sold the same to Varalaxmi and Lakshman Bapuji. Thereafter A-1 engaged L.W.6 i.e., Bellamkonda Chinna Ankulu and another and got the tiled house demolished. But, affidavit filed now gives a very different version to what has been mentioned in the 161 Cr.P.C.

statement. Since these two affidavits, which are now filed, are not part of the Case Diary as these two documents are brought on record much after the impugned order came to be filed and as the contents of these two statements vary with their statements recorded under Section 161 Cr.P.C. statement, the request of the petitioner, for recalling the order dated 06.04.2015 granting anticipatory bail to the respondents 2 and 3 in Criminal Petition No.2620 of 2015, cannot be considered. Hence, I see no merits in the petition and the same is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed. As a sequel to it, miscellaneous petitions pending if any in this Criminal Petition, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt: 21.04.2016
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^[1] (2007) 4 Supreme Court Cases 221

^[2] AIR 1994 SC 853

^[3] (1996) 5 Supreme court Cases 550