THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3465 OF 2015

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in C.C. No.219 of 2012 pending on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District.

The second respondent herein filed a private complaint before the Additional Director of General of Police, C.I.D., Andhra Pradesh, Hyderbad, the same was registered as a case in Cr.No.49 of 2011 for the offence punishable under Sections 409, 418, 423 and 468 of Indian Penal Code, 1860 (for short 'I.P.C.'). The specific allegation made in the complaint is that the petitioner and others created document falsely by impersonation, after they entered into compromise before Lok Adalath and obtained Decree in O.S. No.506 of 2003 and also in other connected matters.

It is the case of the petitioner that the complaint was lodged as an abuse of process of the court and the petitioner did commit no offence punishable under Sections 409, 418, 423 and 468 of I.P.C. It is also contended that the suit in O.S. No.428 of 2012 pending on the file of XIV Additional District Judge, Vijayawada, Krishna District, for specific performance of contract of sale dated 10.09.2010 executed by the original owner Smt.Kolli Samrajyamma in favour of the petitioner and the disputes were adjudicated by the competent civil court, there cannot be any crime separately for the subject matter in the said suit. It is the further case of petitioner that O.S.No.482 of 2012 was settled before Lok Adalath on 01.11.2013 vide award No.1532 of 2013 and O.S. No.1367 of 2008 was settled before the Lok Adalath vide award dated 1528 of 2013. As such the present case cannot be permitted to be continued in C.C.No.219 of 2012, since it is an abuse of process of the Court and prayed to quash the proceedings in C.C.No.219 of 2012 pending on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, for the offence punishable under Sections 409, 418, 423, 468, 202, read with Section 34 of I.P.C.

During hearing, learned counsel for the petitioner contended that when all the civil disputes were settled, the award passed by the Lok Adalath putting an end to the disputes between the parties, then the question of proceeding against the petitioner for various offences does not arise and the present complaint was only to harass the petitioner and prayed to quash the proceedings in C.C. No.219 of 2012 pending on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, for the offences punishable under Sections 409, 418, 423, 468, 202 read with Section 34 of I.P.C.

Whereas learned counsel for the second respondent contended that creation of document subsequent to passing of Lok Adalath Award would amount to an offence and that apart the document was referred to handwriting expert and in turn they opined that signature on the document is not that of the second respondent herein and thereby there is *prima facie* material to proceed against the petitioner and the allegations made in the charge sheet are suffice to conclude that the petitioner committed such offence. He also relied on the Judgment of the Apex Court in **STATE OF TAMIL NADU REPRESENTED BY INSPECTOR OF POLICE, CENTRAL CRIME BRANCH v. R. VASANTHI STANLEY AND ANOTHER**[1] to contend that the Court is expected to be on guard to these kinds of adroit moves. The Court's principal duty, at this juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement, to quash the proceedings merely on ground that accused has settled amount with Bank, would be a misplaced sympathy and here also the settlement was in respect of other claims in the suits, but not the present crime.

The counsel for the petitioner also placed reliance on the Judgment of the Apex Court in **MOHAMMED IBRAHIM AND OTHERS v. STATE OF BIHAR AND ANOTHER**[2] wherein the Apex Court laid down certain parameters, at paragraph 8 of the Judgment, to exercise jurisdiction under Section 482 of Cr.P.C. sparingly.

Undisputedly, the second respondent lodged a complaint and after due investigation, the police filed charge sheet before the Court. During investigation, the disputed document was referred to handwriting expert of FSL for comparison and opinion of the disputed handwritings with the admitted signatures of late Kolli Samrajyamma. The handwriting expert of FSL compared and examined the admitted and disputed handwriting and opined that the person who wrote the red enclosed signatures marked as S.1 to

[1] (2016) 1 SCC 376
[2] (2009) 8 SCC 751

S.12 did not write the red enclosed signatures marked as Q.1 to Q.8.

Q1 to Q.8 are the signatures allegedly scribed by the petitioner and not the second respondent on sale deed, document in dispute. Initially the petitioner leased the property in NTS No.376, Asst. No.20801 land measuring 969.2 Sq. yds., Patibandla vari veedhi, Kaleswarao Road, Governorpet, Vijayawada, for a period of 30 years. Later, due to disputes, the matter reached to the court and the suits were settled before the Lok Adalath.

It is the case of the second respondent that a sale deed was allegedly executed by his mother-in-law on a Non Judicial Stamp worth Rs.100/- by interpolating the date of purchase and by way of noting down the false statement of facts of receiving the consideration of Rs.1,80,00,000/- and forged and fabricated the signatures of his mother-in-law. The interpolation of date of purchase of stamp is suffice to disbelieve the case of the petitioner. If for any reason, the opinion of the handwriting expert is true, the acts of the petitioner would amount to an offence punishable under Section 468 read with Section 34 of I.P.C.

It is the case of the petitioner that he vacated the premises after passing the Awards by Lok Adalath referred to supra. But it is the case of the counsel for the second respondent that he created document and continuing in possession of the property. These questions cannot be decided at this stage while exercising power under Section 482 of Cr.P.C. whether petitioner really vacated the premises or not and whether the signature on the sale deed is forged and whether the petitioner created such document.

But, *prima facie,* in view of the opinion expressed by the handwriting expert of FSL that it is a forged document, who committed forgery is a disputed question of fact and this court cannot decide the disputed question of fact while exercising power under Section 482 Cr.P.C. Apart from the opinion of expert, interpolaition of date of purchase of Non-Judicial Stamp is also strong circumstance.

Learned counsel for the petitioner while contending that the complaint was lodged only to harass the petitioner and to wreak vengeance in view of the settlement to the earlier disputes and drawn attention of this Court to the Judgment of this Court in **MOHAMMED IBRAHIM AND OTHERS v. STATE OF BIHAR AND ANOTHER** referred to supra, wherein the Apex Court held as follows:

> "8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]."

If the principle is applied to the present facts of the case, when there is an element of criminality, the court cannot quash the proceedings by exercising inherent jurisdiction under Section 482 of Cr.P.C.

The counsel for the second respondent drawn the attention of this court to the Judgment of the Apex Court in **STATE OF TAMILNADU, REPRESENTED BY INSPECTOR OF POLICE, CENTRAL CRIME BRANCH v. R.VASANTHI STANLEY AND ANOTHER** referred to supra, reiterated the concept as to when the court can exercise its inherent jurisdiction and held that when it is not legally permissible, the court is expected to be on guard to these kinds of adroit moves. The Court's principal duty, at this juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement, to quash the proceedings merely on ground that accused has settled amount with Bank, would be a misplaced sympathy.

Here also the civil disputes were settled before the Lok Adalath, vide award Nos.1532 of 2013 and 1528 of 2013. But incident of creating document is totally different and the opinion of the expert also clear that the signatures on comparison of admitted signatures with the disputed signatures of Q.1 to Q.8 were not written by the person who wrote the signatures S.1 to S.12 and it is a *prima facie* material to proceed against the petitioner for the offences referred above.

The court can exercise inherent jurisdiction in exceptional circumstances sparingly and merely because it is a case of civil nature, the parties cannot be directed to redress their claim before a competent civil court, when there is an element of criminality and at this stage this Court need not meticulously analyze the case before the trial to find out whether the case ends in conviction or acquittal vide **MRS. DHANALAKSHMI** VS. **R. PRASANNA KUMAR & ORS.**[3]; **GANESH NARAYAN HEGDE** VS. **S.BANGARAPPA & ORS**[4].;

In **STATE OF HARYANA v. BHAJAN LAL**[5] the Apex Court laid down certain guidelines, in guideline No.1 it was held that this court can quash the proceedings where the allegations made in the first information report 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. Similarly, in guideline No.5, it was held that 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 and in guideline No.7 it was further held that 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, this Court can quash the proceedings.

In the present case, the main basis for quashing the proceedings in C.C. No.219 of 2012 is that the civil disputes were settled before Lok Adalath and awards were passed, but that by itself is not a ground, when the document, *prima facie,* the

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[3] AIR 1990 SC 494
[4] (1995) 4 SCC 41
[5] 1992 SUPP (1) SCC 335

handwriting expert of FSL opined that the signature was forged. Therefore, I find that it is a difficult to exercise inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings in C.C. No.219 of 2012 at this stage.

In **STATE OF ORISSA AND ANR. v. SAROJ KUMAR SAHOO**[6] the Apex Court held that power under Section 482 of Cr.P.C. can be exercised sparingly in exceptional circumstances, even if charge sheet is filed the court is bound to consider the allegations made in the charge sheet and cannot appreciate the evidence, but analyze the material for a limited purpose to find out whether the allegations made in the complaint would constitute an offence or not. Applying the principle laid down in the above Judgment to the present facts of the case, for a limited purpose, to decide *prima facie* case. In view of existence of grounds to proceed further, the proceedings cannot be quashed.

Hence, I find that the allegations made in the charge sheet would constitute an offence *prima facie* on its face value and there exists sufficient ground to proceed against the petitioner for the above offence. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19.12.2016
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[6] (2005) 13 SCC 540