THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.1196 of 2013

ORDER:

The petitioners are A2 to A4 of Crime No.51 of 2013 of II town Police Station, Khammam and the second respondent is the *defacto* complainant. The crime registered is for the offences punishable under Sections 420 and 506 read with Section 34 IPC against the accused.

The report of the *defacto* complainant dated 07.02.2013 in registering the crime reads that her father K.Srinivasa Rao and mother K.Lakshmi are the owners of 266 square yards of site which is purchased from P.Samuel, P.Pushpavathi, P.Venkateswalu, P.Sudarshan and P.Venkatamma in the year 1992 under unregistered agreement of sale. However, due to certain reasons her father breathed last before getting the document registered. The said persons were postponing registration on one pretext or the other. While so, without even disclosing, P.Samuel, registered his property in favour of T.Vasanth KumarI (A3), wife of Ashok (VRO) and P.Shobha rani (A4), wife of Srinivasa Rao, and when they questioned, the said Samuel and other persons supra threatened to foist SC/ST case and that they also tried to alienate the property by making threats through rowdy sheeters and the same is though a vacant site, they managed the panchayat to allot house number. Hence to take action.

The petitioners sought for quashing of FIR with contentions that they are innocent and falsely implicated. A1 executed the unregistered sale agreement in the year 1992 on Rs.30/- stamp paper in favour of mother of complainant as per remand report and the parents of complainant did not issue any notice demanding to execute sale deed if at all the so called agreement is genuine and executed by A1 and the complainant although kept quite without even demanded or enforcing the contract for sale which is barred by law and being conscious of it, they could not succeed by impugning civil suit, by abusing the process resorted to foist the false crime for the alleged offence of cheating under Section 420 of IPC with allegation of criminal intimidation under Section 306 of IPC. It is the further contention that no ingredients of Section 420 IPC that could apply merely because A1 sold the plots to A3 and A4 supra under registered sale deed and that it does not constitute any offence and there is nothing to show any dishonest intention in their obtaining sale deed much less for A1 from inception of entering into contract with parents of the complainant in the year 1992 and no any case made out against any of the petitioners, that A2 is working as VRO and he is falsely implicated, though there is no sale deed in his favour but for in favour of his wife A3 and hence, to quash the proceedings.

There was interim stay in favour of quash petitioners A2 to A4 supra. The *defacto* complainant put forth appearance and filed vacate stay petition with additional documents and it is the contention of the *defacto* complainant that P.Samuel (A1), T.Vasantha Kumari (A3), P.Shobha rani (A4) W/o.Srinivasa Rao knew that parents of complainant by name Kotha Srinivasa Rao and K.Laxmi purchased two house plots of 266 square yards in the year 1999 and 2000 from Samuel and others and unfortunately, the parents of complainant breathed last and the complainant and her two sisters later demanded A1 for registration of sale deeds, but he was postponing the same and while so, being privy by accused persons, they created the sale deed and in fact complainant and her two sisters were enjoying the schedule property within their possession by payment of entire consideration pursuant to the possessory agreement of sale of the year 1999 and 2000 and accused persons have no manner of right or possession over the property, however, taking advantage of the escalation of the prices and to grab the property if possible, A1, A3 and A4 claimed they entered into sale agreement dated 28.09.2008 with the *defacto* complainant and her sisters to purchase above two plots at

Rs.2,200/- per square yard and paid advance of Rs.1,70,000/- as part consideration and to pay balance within 90 days to obtain sale deed and to get passions after measurement for the extent in which A2, husband of A3 is one of the witness and as per the agreement, once if parties on having been executed and later paid part of the consideration on 03.04.2009 of Rs.15,000/-and later of Rs.19,000/- and while so there is a dispute resolution of the said contract for sale, on 25.11.2013, referring to the present Crime No.51 of 2013 pending and also C.C.No.707 of 2013 at Munsif Magistrate Court, Khammam and it clearly speaks their dishonest intention from the inception to cheat and hence the quash petition is liable to be dismissed.

In the additional material, the original sale agreement dated 16.06.1992 executed by Polepongu Samuel (A1) in favour of Pushpavathi, W/o. said Samuel filed and the same is for 540 square yards of Rotarynagar, Khanapuram Haveli and subsequently on 04.05.1995 possessory sale agreement in favour of Taluri Venkata Ramulu, S/o.Veeraiah executed by said Polepongu Pushpavathi, W/o.Samuel and her sons by name Sudarshan, Venkateswarlu for Rs.11,000/- a house plot and later on 08.07.1999, the said P.Samuel, S/o.Veeraiah and his wife Pushpavathi and their sons Sudershan and Venkateswarlu supra executed the possessory sale agreement showing they got right and title from the possessory agreement of 1992 supra, for Rs.40,000/- the site of 166.66. square yards by showing the same in complaint referring West site sold to T.Venkataramaiah, East: open site of Sk.Khasim and South: house of T.Venkateswarlu and there was another agreement dated 28.09.2008 by K.Chamundeswari (complainant) and her sisters B.Akhilandeswari and K.Rajeswari in favour of T.Vasantha Kumari (A3), W/o.Ashok Kumar(A2) for 299 square yards with the schedule description related to the property and subsequently on 25.11.2011, there was panchayat between them, there A2 is also signatory saying they want to settle the matter outside the Court amicably and thereby submits the proceedings are not liable to be quashed and there is nothing but an act of cheating. Infact the sale agreement is of the year 2008. There was no suit for specific performance of the contract for sale by enforcing the agreement filed by the Accused persons 3 and 4.

The case of complaint is that, despite the above and having full well knew the *defacto* complainant and her sisters are the owners of the property since their parents as per possessory agreement of 1999 purchased from P.Samuel, his wife and two sons, the A3 and A4 fraudulently obtained sale deeds from P.Samuel. A1 and A2 is party attestor to it and the A3 and A2 having obtained possessory sale agreement from *defacto* complainant and her sisters on 28.09.2008 and has to pay balance and obtain sale deed, the obtaining of sale deed from Samuel by A3 and A4 is nothing but cheating. Whether the sale agreement is barred by time or not is not germane here.

Having regard to the above, the disputed facts are to be decided after investigation from final report and remedy for A1, A3 and A4 is to seek for discharge if no grounds to frame charge. So far as A2 husband of A3 concerned by his mere allegation, there is nothing to say as privy.

In the result, the Criminal Petition is allowed in part quashing the proceedings in Cr.No.51 of 2013 of II town Police Station, Khammam against the 1st peritioner/A2 while dismissing against the 2nd and 3rd petitioners(A3 and A4 respectively).

Consequently, miscellaneous petitioner, if any, pending in this petition shall stand closed.

Dr. B.SIVA SANKARA RAO J

Date: 28.01.2016

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