

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9283 of 2009

ORDER:

This petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioner/accused No.1 in C.C.No.133 of 2007 on the file of Court of Judicial Magistrate of First Class(Special Mobile) at Srikakulam.

The contention of the learned counsel for the petitioner is three fold:

1. Accused No.2, who faced the trial in C.C.No.133 of 2007 was acquitted on merits;

2. He further submitted that even if the allegations made against the petitioner are ex facie taken to be true and correct, no case is made out against the petitioner for the alleged offence punishable under Sections 420, 468 and 471 IPC; and

3. Continuation of criminal proceedings against the petitioner certainly would amount to abuse of process of law.

On the other hand, learned Public Prosecutor submitted that merely because case against accused No.2 was acquitted by itself is not a valid ground to quash the proceedings against the petitioner. He further submitted that this is not a fit case to quash the proceedings.

The facts leading to filing of the present petition are briefly as follows:

The third respondent lodged a complaint to the Station House Officer, Srikakulam II Town Police Station, who in turn registered a case in Crime No.15 of 2005 against the petitioner and another for the offences punishable under Sections 420, 468 and 471 IPC. As per the allegations made in the complaint, on

26.10.2001, accused No.2 had purchased two non-judicial stamp papers on his name and prepared an agreement of sale by forging the signatures of the *de facto* complainant. It is further alleged that A2 created a fake agreement of sale as if the same was executed by the *de facto* complainant in favour of the petitioner herein with an ulterior motive.

After completion of investigation, the Investigating Officer laid charge sheet against the petitioner and A2 for the offences punishable under Sections 420, 468 and 471 IPC. The learned Additional Judicial Magistrate of First Class, Srikakulam after satisfying himself with the material placed before him has taken the case on file under the above referred sections and issued summons to the petitioner and other accused.

The petitioner herein is facing trial for the offences punishable under Sections 420, 468 and 471 IPC. A perusal of the record reveals that the trial Court split up the case against the petitioner/A1.

At the time of arguments, learned counsel for the petitioner filed the copy of judgment in C.C.No.133 of 2007. A perusal of the same reveals that A2 faced the trial for the offences punishable under Sections 420, 468 and 471 IPC. On behalf of the prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P6 were marked. After full fledged trial, the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused for the offences punishable under Sections 420, 468 and 471 IPC and acquitted him.

The crucial question that arises for consideration is whether mere acquittal of A2 by itself is a sufficient ground to quash the proceedings against the petitioner/A1.

As per the prosecution version, A2 created the alleged

agreement of sale dated 26.10.2001. The trial Court made an observation that the Investigating Officer had not taken the thumb mark of A2 to compare the same with that of the disputed document. For better appreciation of the contention of the learned counsel for the petitioner, it is not out of place to extract hereunder the relevant paragraph 21 of the judgment:

“21. To prove the case against accused the prosecution should establish that the accused used any forged document with fraudulent or dishonest intention as if it is a genuine document. The case of prosecution is that the accused used the forged document dated 26.10.2001 and filed a suit in O.S.661/03 on the file of Prl.Jr.Civil Judge Court, Srikakulam for specific performance of contract against defacto-complainant and others as if the said document was executed by the said complainant. To prove this contention prosecution has to prove necessarily that the accused used a forged document in the suit filed by him. To prove the same the prosecution has to produce the material in certified copy or original document from the file of said suit to prove that the accused filed the forged document to use the same in the civil suit. But, any such document was not produced before the Court. The prosecution has to prove further that the accused filed the said document in the civil suit by knowingly or having reason to believe that the document was forged one. Generally the Advocates file the documents which were supply to them by their clients and at that stage they may not able to scrutinize whether the said documents are genuine or fabricated. Hence the prosecution has to establish that the accused known or has the reason to believe that the document is forged. There is no material on record to show that the accused either used the said document in the civil suit or that it is forged or having reason to believe that it is forged. A simple allegation that accused forged and used the same would not substitute a legal proof before the Court. In these circumstances non production of alleged forged document before the Court is fatal to prosecution case. There is no substantial evidence on record to prove that the accused used the forged document. Therefore, it

cannot be held that the prosecution proved the offence under Section 471 IPC against accused.”

A perusal of the above clearly demonstrate that the prosecution has not placed the document dated 26.10.2001 before the trial Court. In the absence of the document, it may not be possible for the Court to arrive at a conclusion whether accused No.2 forged the document. There is no mention in the charge sheet that A1 forged the agreement of sale dated 26.10.2001. There is no whisper in the charge sheet that the petitioner/A1 induced *de facto* complainant to deliver the property. As per the prosecution version, A2 induced the *de facto* complainant to deliver the property.

The gist of the allegations made in the charge sheet is that A2 alone has committed the alleged offences punishable under Sections 420, 468 and 471. After full-fledged trial, A2 was acquitted on merits. At this juncture, learned counsel for the petitioner has drawn my attention to the following decisions:

1 . **GARLAPATI KAMAL KUMAR v. STATE OF TELANGANA, REP.BY PUBLIC PROSECUTOR^[1]**, wherein it was held at paras 4, 5 and 6 that:

“4. The law is well settled in this regard by the expressions of this Court in Jangavula Rambabu v. The State(1) 1992 APLJ (CrI) 183, Thallapalli Rajaiah v. State of A.P. (2) 2000 (1) ALT (CrI) 174 (A.P.), G.Venkataratnam Kumar v.State of A.P. (3) 2001(2) ALT (CrI) 482 (A.P.) = 2001 (2) ALD (CrI) 851, Azghar Ahmed Khan (A-9) v. The State of A.P., rep. by its Public Prosecutor, High Court, Hyderabad (4) 2003 (1) ALT (CrI.) 56 (A.P.) and another unreported expression of this Court in Sama Swamy v. State of Telangana(5) CrI.P.No.12708 of 2014, dated 28.10.2014.

5. No doubt, as held in G.Venkataratnam Kumar (supra), if there is a *prima facie* accusation against the split up case accused to face trial, mere acquittal of some

of accused who faced trial already is not a ground to acquit or discharge or to quash. However, if there is no material *prima facie*, it is nothing but a futile exercise as pointed out in Tallapalli Rajaiah (supra). The learned public prosecutor did not chose to dispute above material on record though not conceded the factum of there is no material to face trial by accused No.6, apart from the issue of his identity.

6. Accordingly, the Criminal Petition is allowed and the proceedings in PRC No.91 of 1994 on the file of Judicial Magistrate of First Class, Sultanabad against the petitioner/accused No.6 are quashed.”

2. *NYATHARI BABU v. STATE OF A.P., KARIMNAGAR*

DISTRICT, REP.BY PUBLIC PROSECUTOR^[2], wherein it was held at paras 3 and 4 that

“3. The petitioner now seeks for quashment so far as the petitioner/A3 is concerned. The learned counsel for the petitioner placed reliance upon Thallapalli Rajaiah v. State of A.P. (1) 2000(1) ALT (Cr.) 174 (A.P.). In that case, case against one of the accused was split up. The other accused were tried and were acquitted by the Sessions Court. None of the eye witnesses supported the prosecution case. The witnesses could not identify any of the culprits. Holding that there is no scope for conviction of A.7 who was the petitioner in that case, a learned single Judge held that the proceedings in P.R.C. deserve to be quashed and quashed the same accordingly.

4. In the present case, where all the five material witnesses, who were examined before the learned Assistant Sessions Judge, Siricilla, turned hostile and did not support the prosecution story, there is no possibility of the present petitioner/A.3 being convicted. I, therefore, agree with the contention of the learned counsel for the petitioner that P.R.C.No.14 of 2012 so far as petitioner/A.3 is concerned is liable to be quashed.”

3. *N.V.S.K.PRASAD v. STATE OF A.P. REP.BY PUBLIC*

PROSECUTOR, HIGH COURT, HYDERABAD^[3], wherein it was held at para 7 that

“7. The above observation made by the learned trial Judge in the above C.C.No.230 of 2007 made it clear that the occurrence is doubtful. In the complaint, it is alleged that A1 to A3 together committed the above offence. In view of the fact that the trial Court acquitted two of the accused, whose cases stood on similar footing as that of the petitioner, this Court is of the view that this is a fit case to quash the proceedings against the petitioner-A2.”

The principle enunciated in the cases cited supra is clearly applicable to the facts of the case on hand. As observed earlier, no case is made out against the petitioner/A1. In such circumstances, forcing of the accused to face the rigor of the trial certainly would amount to abuse of process of law.

A perusal of the record reveals that the petitioner herein filed O.S.No.163 of 2004 against the *de facto* complainant for specific performance of the suit. A perusal of the record further reveals two civil suits are pending between the parties. In such circumstances, the possibility of roping the accused for the reasons best known to the complainant can be ruled out completely.

Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered opinion that continuation of proceedings against the petitioner would amount to miscarriage of justice.

Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner/A1 in C.C.No.133 of 2007 on the file of the Judicial Magistrate of First Class (Special Mobile) at Srikakulam. Consequently, miscellaneous petitions if any pending in this criminal petition, shall stand closed.

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T.SUNIL CHOWDARY, J

Date:21.03.2016

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[\[1\]](#) 2016(1) ALT Criminal 99

[\[2\]](#) 2015(3) ALT 389 AP

[\[3\]](#) 2014(1) ALT Criminal 357 AP