

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.P.No.10766 of 2010

ORDER:

The petitioners, who are A-2 to A-5, filed this petition under Section 482 Cr.P.C. seeking to quash the proceedings initiated against them in C.C.No.1293 of 2009 on the file of the X-Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offences punishable under Sections 423, 420 and 120-B I.P.C.

It is the case of the prosecution that the husband of the 2nd respondent-*de facto complainant* and the non petitioner-A1 are the sons of late B.Lakshamma, who died on 24.09.1985. The said B.Lakshamma and one B.Chennaiah jointly purchased the premises bearing No.12-8-166 to 168 situated at Mettuguda, Secunderabad, admeasuring 380 sq.yards under a sale deed dated 15.03.1958 from one B.Narasimha Rao, out of which an extent of 220 sq.yards fell to the share of the said B.Lakshamma. It is further alleged that after the death of said Lakshamma, the non petitioner-A1 got separated from the joint family and executed a release deed dated 09.01.1998 in favour of the husband of the 2nd respondent-*de facto complainant*, whereby releasing 105 sq.yards, which was fell to his share, after receipt of consideration of Rs.30,000/-. Thereafter, the non- petitioner-A1 again executed a gift deed dated 01.12.2007 in respect of the said property in favour of his sons, who are petitioners 1 and 2/A2 and A3 herein. The said gift deed was attested by petitioners 3 and 4/A4 and A5. Thus, it is alleged that the petitioners herein have committed the offences punishable under Sections 420, 423 and 120-B I.P.C.

Learned Counsel for the petitioners-accused submitted that

the non petitioner-A1 did not execute any release deed in favour of the husband of the 2nd respondent-*de facto complainant* and as such the execution of gift deed by the non petitioner-A1 in favour of his sons (petitioners 1 and 2 herein) does not arise. He further submitted that petitioners 3 and 4 are only cited as witnesses to the alleged gift deed. He further submitted that the 2nd respondent-*de facto complainant* has filed a civil suit in respect of the same property and obtained a decree and, therefore, launching of prosecution against the petitioners herein is nothing but an abuse of process of law.

On the other hand, the learned Counsel for the 2nd respondent-*de facto complainant* submitted that petitioners 1 to 3 herein being the family members of the husband of the 2nd respondent are well aware about the act of non petitioner-A1 in relinquishing his rights in the property in favour of his brother, who is none other than the husband of the 2nd respondent and, therefore, the petitioners 1 and 2 herein have fraudulently obtained gift deed from their father (A-1) with the active connivance of petitioners 3 and 4 herein. It is further submitted that on an earlier occasion, the petitioners herein along with A-1 filed CrI.P.No.624 of 2010 seeking to quash the very same proceedings in C.C.No.1293 of 2009 and thereafter they have not pressed the substantive relief of quashing the impugned proceedings and, therefore, the present petition on the self same grounds cannot be maintained.

I have gone through the material available on record. Petitioners 1 and 2/A2 and A3 are the sons and petitioner No.3/A4 is the wife of the non-petitioner-A1, who is the brother of the husband of the 2nd respondent-*de facto complainant*. A perusal of

the earlier order of this Court dated 29.01.2010 passed in Crl.P.No.624 of 2010, what is noticed is that as the petitioners herein had not pressed the substantive relief of quashing the impugned proceedings, this Court disposed of the said petition directing them to approach the trial Court for recalling the warrants pending against them. Since the said criminal petition was not disposed of on merits, the present petition is maintainable on the self same grounds.

Even though it is claimed by the 2nd respondent-*de facto complainant* that the non petitioner-A1 has relinquished his rights in the property in favour of her husband, no document whatsoever has been produced in proof thereof. Further, it is alleged that petitioners 1 and 2/A2 and A3 are said to be the beneficiaries of the gift deed said to have been executed by the non petitioner-A1 and the said gift deed was attested by petitioners 3 and 4/A4 and A5. In the instant case, it is noticed that the 2nd respondent-*de facto complainant* has filed a civil suit and obtained a decree in respect of the property, which is the subject matter of the gift deed alleged to have been executed by the non-petitioner-A1 in favour of his sons, who are petitioners 1 and 2 herein, without having any valid title. In that view of the matter, this Court is of the view that continuance of proceedings against the petitioners-A2, A3, A4 and A5 are nothing but an abuse of process of law and are liable to be quashed. However, the case against the non-petitioner-A1 can continue.

Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioners-A2, A3, A4 and A5 in C.C.No.1293 of 2009 on the file of the X-Additional Chief Metropolitan Magistrate, Secunderabad, are hereby quashed.

However, the learned Magistrate shall proceed with the case against the non-petitioner-A1 as expeditiously as possible.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

05-02-2016

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