

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10257 of 2013

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ORDER :

The petitioners are A.1, A.3 and A.4 of C.C.No.79 of 2013 on the file of the III Additional Judicial First Class Magistrate, Tirupati. The *de facto* complainant is the 2nd respondent to the quash petition. The calendar case is an out come of Crime No.87 of 2009 of S.H.O., Chandragiri Police Station, Chittoor District, registered for the offences punishable under Sections 420, 468, 471 and 419 IPC based on a private complaint of the *de facto* complainant that was referred to police for investigation by the learned Magistrate under Section 156(3) Cr.P.C. The police after registration of crime filed final referred report. It is subsequently on the protest application of the *de facto* complainant, the learned Magistrate has taken cognizance for the offences supra against A.1 to A.4 and issued summons. It is impugning the same, present quash petition is filed.

2. In this factual scenario coming to the original private complaint of the *de facto* complainant concerned, one Kommineni Guramma is the wife of K.Veerappa Naidu and he is having another wife by name K. Nagulamma and that they have no issues in their marital lives.

K. Veerappa Naidu was having agricultural lands to an extent of Ac.8.52 cents in Sy.Nos.670, 661-3, 661-6, 8,

662-27, 688-5A and 704 situated at Bodimboy Village, Kothapalli Village accounts, Chandragiri Mandal, and he is in possession and enjoyment of the said property through personal cultivation. During his life time, K. Veerappa Naidu executed a registered Will dated 25.01.1999 in favour of his first wife Nagulamma. Later, Veerappa Naidu died testate on 30.04.2004 leaving behind him, his two wives and they succeeded as per the Will and while they were in possession and enjoyment of the property as absolute owners, on 05.02.2007 Nagulamma executed a Will in respect of her share in favour of the *de facto* complainant and later Nagulamma died testate on 26.02.2007 bequeathing the property under the Will and the same was acted upon by the *de facto* complainant. Thereby, the *de facto* complainant became absolute possessor and owner of the entire property and no others including the accused persons have any manner of right or possession or interest or enjoyment over the property. In January, 2008, when the *de facto* complainant wants to take mutation in her name in the revenue records, taking advantage of this, A.1, who is her relative, pretended her to take to Mandal Revenue Office, Chandragiri, and obtained her signatures on blank stamp papers for the purpose of mutation and for getting pattadar pass book and title deed and she believed him in so doing and waited for getting pattadar pass book and title deed for some time and for not getting the same from

his postponing, she suspected the bonafides of A.1. After one year i.e., in January, 2009, when the de facto complainant went to the Mandal Revenue Office, Chandragiri, and enquired, where she was informed that A.1 cause mutated his name in the revenue records in respect of her share and also the share of Nagulamma saying Nagulamma executed registered settlement deeds in his favour on 27.01.2005 for an extent of Ac.5.37 cents and on 31.01.2008 for an extent of Ac.3.09 cents by the de facto complainant though they did not execute the alleged settlement in favour of A.1. Thereafter, the de facto complainant went to the Sub Registrar Office, Chandagiri, on 04.01.2009, and enquired about the so-called settlement deeds and where she came to know that A.1 created a forged settlement deed in his favour as if executed by Nagulamma and the de facto complainant respectively by impersonation of them by affixing the photo of another woman by name K.Vasumathi (A.2) in place of Nagulamma and also the accused persons created the forged documents by impersonation and forgery and cause mutated the properties in the name of A.1. It is further averred that the de facto complainant herself is in possession and enjoyment of the properties even date and that she herself and Nagulamma did not execute the settlement deeds dated 31.01.2008 and 27.01.2005 respectively and they are forged, fabricated and impersonated documents and basing on which, A.1

obtained pattadar pass books behind back of the de facto complainant by deceiving her with the assistance of A.2 to A.4 being privy in commission of the offence of cheating, forgery, impersonation and fabrication and in using as genuine documents and thereby they are liable for the offences. In the complaint, the de facto complainant cited the witnesses viz., N.Mogili Naidu and Singu Muni Krishnama Naidu by placing reliance on documents viz., Xerox copy of registered gift deed dated 27.01.2005 and 31.01.2008, Xerox copy of complaint issued by the de facto complainant dated 05.02.2009, ration card of A.2 dated 16.02.2006, Xerox copy of ration card issued by the Mandal Revenue Office, Tirupati to the de facto complainant dated 01.02.2006, Xerox copy of Will deed executed by Nagulamma to the de facto complainant dated 05.02.2007 and also Xerox copy of Will deed executed by Veerappa Naidu in favour of K.Nagulamma and K.Guramma dated 25.01.1999. Pursuant to the said private complaint referred to police for investigation by the learned Magistrate, the police after completion of investigation filed final report referring the complaint as civil in nature by serving a copy to the de facto complainant, therefrom the de facto complainant filed the protest petition with self same averments of the earlier private complaint and by saying the police though directed by the Magistrate to register the crime and to investigate, out of the political influence by A.1 to A.4 and clout

managed police with no action in filing the referred report, from which she is constrained to file the protest application, thereby to take cognizance. By referring to the documents already filed referred supra and also the letter of the

IV Additional Junior Civil Judge, Tirupati, through S.H.O., Chittoor on the police referred report intimation in January, 2013, the protest application was filed on 11.01.2013 and she cited the self same witnesses i.e., N.Mogili Naidu and Singu Muni Krishnama Naidu, in the protest application besides herself. The learned Magistrate recorded the sworn statements of the de facto complainant as LW.1 and another. Basing on the sworn statements of LWs.1 and 2, the learned Magistrate passed the order and taken cognizance as a private complaint procedure on 02.04.2013, which reads as under:

'Perused the contents of the protest petition and sworn statements of LWs.1 and 2. The allegation against the accused was that A.1 obtained signature of LW.1 for obtaining pattadar pass books, but she was not issued any pass book and subsequently she came to know that the pass book was issued in favour of A.1 and on enquiry in the Registrar Office she came to know that A.1 forged the signature of LW.1 and her co-sister and affixed the photograph of A.2 in place of her co-sister and A.3 and A.4 are acted as witnesses on the forged document. The allegations in the petition and in the sworn statement of witnesses attracts prima facie the ingredients

of Section 419, 420, 468, 471, 474 of IPC and therefore the case is taken on cognizance for the offence U/S.420, 429, 468, 471, 474 R/w.Sec.120 IPC against A.1 to A.4 and the number Crime No.79 of 2013 and issue summons to A. to A.4 on payment of process'.

3. No doubt, as per the civil suit O.S.No.64 of 2009 filed by the de facto complainant as plaintiff against A.1 as defendant for the relief of declaring that she is absolute owner of the plaint schedule property of Ac.3.09 cents and by seeking to cancel the so-called forged gift deed dated 27.01.2005 as if it was executed by late K.Nagulamma in favour of the defendant and also to cancel the so-called fraudulent gift deed dated 31.01.2008 as it is not executed by the de facto complainant in favour of the defendant and those were obtained by impersonation and fraudulent misrepresentations respectively and for injunction restraining defendant and his men from any interference. A.1 contested the said suit. It is contended by A.1 in the written statement that without divorce to the first wife i.e, Nagulamma, K.Veerappa Naidu married the plaintiff and thereby the plaintiff's marriage is void one and she is not entitled to succeed any of his properties. Nagulamma being the first wife of Veerappa Naidu alone is sole Class-I legal heir and Veerappa Naidu did not execute the alleged Will dated 25.01.1999, but for died intestate on 30.04.2004 and Nagulamma is alone succeeded the estate of Veerappa Naidu including the plaint schedule

property as sole heir. During life time of Nagulamma, she gifted the suit properties in favour of the defendant and it is even to the knowledge of plaintiff herein. It is submitted that as there were no amicable terms between Nagulamma and plaintiff-Guramma, Nagulamma did not execute the alleged Will dated 05.02.2007 bequeathing her properties in favour of the plaintiff and said Will is a fraudulent, forged and fabricated one and created by the plaintiff in collusion with one K. Papaiah Naidu, K.Subbarama Naidu, S.Munikrishnama Naidu, who are the attestors and scribe of the said Will deed respectively, for the purpose of creating litigation and to have wrongful gain. The defendant further submitted that Nagulamma gifted the suit schedule property in his favour under a registered Gift Deed on 27.01.2005 by the date of the alleged Will dated 05.02.2005 and that he has accepted and agreed upon and thereby Nagulamma has no property after executing the registered gift deed dated 27.01.2005 in favour of defendant, therefore, the question of her executing Will in favour of plaintiff on 05.02.2005 does not arise. It is further averred that as per the request of Nagulamma, defendant was gifted away to an extent of Ac.1.10 cents in Sy.No.688/5 situated at Mungilipattu Kothapalli Village in favour of the plaintiff under registered gift deed dated 31.01.2008 and that the plaintiff accepted the same and sold the said property to one K. Subbarama Naidu and K.Papaiah Naidu under two

separate sale deeds dated 22.09.2008. The defendant executed the gift deed in favour of plaintiff on advice of elders and plaintiff executed registered gift deed dated 31.01.2008 for the suit properties in favour of defendant to avoid further litigation even though she has no right over the same, thereby he sought for dismissal. The other suit O.S.No.199 of 2009 is filed by K.Hari Babu (A.1) against K.Guramma, the de facto complainant herein, for the relief of partition of the house property situated at Tirupati Urban, Tirupati Village, Muthyalareddipalli Gram Panchayat, S.V.Nagar, into two equal shares and to allot one such share to the plaintiff.

4. As per the police final report, on 27.01.2005 and 31.01.2008 at the Office of Sub-Registrar, Chandragiri and Tahasildar, Chandragiri, the alleged A.1 by conniving with A.2 to A.4, cause prepared the gift deed dated 27.01.2005 pertaining to the agricultural land to an extent of Ac.5.37 cents situated at Bodimbai Village, Kothapally Village Accounts, Chandragiri Mandal, as if it was executed by Nagulamma, first wife of Veeraiah Naidu, in the name of A.1 cause producing A.2 in the place of Nagulamma by misrepresenting and cause identified through A.3 and A.4 in the Office of the Sub-Registrar, Chandragiri, thereby impersonated, cheated in creating the forged document and using the same as genuine one and got mutated the lands in the revenue records and obtained pattadar pass book. It is further stated in the final report that A.1

allegedly obtained signatures of the de facto complainant on blank stamp papers and forged the same as gift deed executed by the de facto complainant on 31.01.2008 and brought the lands of the plaintiff in his favour. The investigation reveals from examination of LWs.1 to 6 and their statements of whom, LW.1, the de facto complainant herein and LW.2 is her grand son though supported the F.I.R. contents and LWs.3 to 6 stated that the accused and the de facto complainant are close relatives and they tried to compromise, but LW.1 did not listen to their words and filed the complaint in Court and therefrom submitted it is a purely a civil dispute and civil litigation in O.S.No.64 of 2009 on the file of the Principal Senior Civil Judge, Tirupati, is pending, thereby referred as civil dispute.

5. The police referred report did not state from the investigation as to there is no fraudulent signatures of Nagulamma and she personally appeared and executed the so-called gift deed on 27.01.2005 in favour of A.1 and not impersonated by A.2 and that A.3 and A.4 identified Nagulamma and not impersonated A.2 as if Nagulamma. The police investigation also nowhere speaks about the so-called gift deed obtained by A.1 from the de facto complainant dated 31.01.2008 also genuine one, but for simply referred as of civil nature in saying O.S.No.64 of 2009 filed by the de facto complainant-Guramma against the accused persons is pending and LWs.3 to 6 stated that they tried to compromise the matter between the de

facto complainant and A.1 and she did not heed them. The said police investigation is not only perfunctory but also mechanical and not a fair investigation and they cannot say without real investigation for which the crime is registered they could not have been civil nature merely because three witnesses allegedly examined stated they went to settle the matter amicably and the de facto complainant did not heed their words or merely because of O.S.No.64 of 2009 filed by the de facto complainant is pending. It is there from the learned Magistrate by recording the sworn statement of the de facto complainant and another witness as LW.2 and taken cognizance as it is in support of her detailed case in private complaint reiterated in protest petition that reiterated in her sworn statement also by filing supporting documents and those are forged, fabrication and creation. Once that is the case and the earlier investigation even not referred in the cognizance order of the Magistrate though supposed to be and now referred there is nothing to say any investigation done and there is no impersonation or forgery to genuine document and when the de facto complainant clearly speaks those are impersonated and created by forged and fabrication by A.1 so far as Nagulamma concerned for the gift deed dated 27.01.2005 by impersonating through A.2 as if Nagulamma by cause identified falsely through A.3 and A.4 themselves, is nothing but forgery and fabrication by impersonation and

the subsequent obtaining of pattadar passbook by using the document as genuine forged document and thereby all the offences mentioned in the original private complaint and protest application prima facie attracts and even from the accused persons by filing the additional documents, which are Xerox copies of the gift or settlement deeds and the pattadar pass book, substantiates the claim of the de facto complainant and there is nothing to show but for the de facto complainant signatures is there and she alleged appeared and executed so far as Nagulamma that could not be shown and it is matter for trial from the prima facie cognizance taken by the Magistrate for this Court while sitting against there is nothing to interfere.

6. The de facto complainant herein is contesting the suit by filing written statement. No doubt, the suits are pending there from. However, the fact remains if at all Nagulamma executed gift deed dated 27.01.2005 in favour of the defendant, there is no meaning in his executing, out of it any land towards gift in favour of plaintiff, much less to obtain another gift from the de facto complainant for the entire properties already covered by alleged gift deed executed by Nagulamma and even plaintiff claimed with no right in saying on the alleged advice of elders. When that explanation is not believable it is if at all proved left open to put forth in defence in the criminal case during trial as the main matter to be adjudicated is whether the alleged gift deed dated

27.01.2005 executed by Nagulamma or it is impersonated by using A.2 and A.3 and A.4 are identified the witness as if identified Nagulamma, to have undue benefit by A.1, same is required to be adjudicated.

7. Accordingly, the criminal petition is dismissed, however, without prejudice to the defence of accused before the trial Court.

8. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt:22.01.2016.

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