

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14221 of 2016

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.79 of 2013 on the file of IV Additional Junior Civil Judge, Tirupathi, for the offences punishable under Sections 420, 419, 468, 471, 474 read with 120(B) IPC.

The main contention of the petitioners before this Court is that the *de facto* complainant – respondent No.2 (Smt K.Guramma) filed O.S.No.64 of 2009 on the file of Additional Senior Civil Judge, Tirupathi, to declare her as the absolute owner of the plaint schedule property canceling the forged gift deed dated 27.01.2005, created by impersonation in favour of the defendant and for cancellation of gift deed dated 31.01.2008 as a fraudulent document; and since the civil suit was decided holding that the de facto complainant was not entitled to claim the relief of cancellation of gift deed dated 27.01.2005, as she failed to prove her claim regarding fabrication of gift deed dated 31.01.2008 by adducing evidence, continuation of proceedings before the criminal Court in C.C.No.79 of 2013 is abuse of process of Court and it is only to wreak vengeance and prayed to quash the proceedings in Calendar Case.

This Court while issuing notice to respondent No.2, permitted personal service in memo USR No.7626/2016 (proof of service). None put up appearance on behalf of respondent No.2, *de facto* complainant.

During hearing, learned counsel for the petitioners, while reiterating the contentions urged in para 6 of the petition, has drawn the attention of this Court to the finding recorded by the Trial Court on issue No.8; and the learned Trial Judge framed an appropriate issue whether the plaintiff has executed any gift deed dated 31.01.2008 in favour of the defendant but this issue was held in favour of the defendants and declined to grant a decree in favour of the *de facto* complainant - respondent No.2. It is brought to the notice of this Court by the learned Public Prosecutor appearing for the State of Andhra Pradesh that the petitioners filed Crl.P.No.10257 of 2013 for the self-same relief which ended in dismissal by this Court by order dated 22.01.2016. The operative portion reads as under:

“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.”

Learned counsel for the petitioners contended that a second petition is maintainable due to changed

circumstances, i.e. due to decision in civil suit, and drawn the attention of this Court to the judgment of the Supreme Court in **Rajib Ranjan v. R.Vijay Kumar**¹. The Supreme Court observed that, when the respondent filed the civil suit challenging the decision of the Electricity Board in returning his tender documents on the ground that the same were not as per pre-qualifying conditions of the tender and thus resorted to civil remedy, however, he failed therein for the reasons best known to him, sought to withdrew the same and, accordingly, the same was dismissed for non-prosecution. This judgment, at best, would come to the assistance of the petitioners to contend that criminal proceedings cannot be continued when the relief claimed in the petition is based on the same allegations.

Dismissal of the criminal complaint earlier would not debar from filing second application in view of changed circumstances, more particularly, pronouncement in O.S.No.64 of 2009 on the file of Additional Senior Civil Judge, Tirupathi, by judgment dated 16.03.2016.

When the 2nd respondent – *de facto* complainant filed a suit making identical allegations and failed to prove her case, continuing the proceedings in criminal case is nothing but an abuse of process of Court. Apart from that, the judgment of Civil Court is binding on the Criminal

¹ LAWS (SC) 2014 10-27

Court. Therefore, the proceedings in C.C.No.79 of 2013 cannot be continued.

It is settled law that power, under Section 482 Cr.P.C, can be exercised sparingly in exceptional circumstances. This Court cannot go into details meticulously. At the stage of considering the case of the petitioners and for the limited purpose whether the proceedings can be continued, this Court can peruse the material produced along with record.

The Supreme Court in **State of Haryana v. Bhajan Lal**² laid down seven guidelines which are as follows:

- 1) 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.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.
- 5) 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.

² AIR 1992 SC 604

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) 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.

But, according to guideline Nos.5 and 6, if the complaint filed is an abuse of process of Court or to wreak vengeance against the petitioners – accused, the Court can quash the proceedings. Here, the second respondent filed a civil suit making identical allegations for cancellation of gift deed and it was disbelieved by the Civil Court based on the evidence available on record and declined to pass a decree in her favour and the judgment attained finality as contended by the petitioners' counsel. Since the second respondent did not bring to the notice of this Court filing of any appeal against the judgment, I have no other alternative to believe the representation made by the counsel that the judgment attained finality. Hence, applying the principles laid down in **Bhajan Lal** (2 supra), I find that continuation of prosecution is abuse of process of Court and, thereby, the proceedings are liable to be quashed.

The Criminal Petition is, accordingly, allowed and the proceedings in C.C.No.79 of 2013 on the file of IV Additional Junior Civil Judge, Tirupathi, for the offences punishable under Sections 420, 419, 468, 471, 474 read with 120(B) IPC, are hereby quashed.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:09.12.2016
usd

