

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15146 OF 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings against the petitioner in C.C. No.546 of 2016 pending on the file of II Special Magistrate Court, Vijayawada, whereby directed the CMO/ Superintendent of the Court to collect stamp duty payable on Exs.P.1 to P.8 on or before 05.10.2016.

02. Aggrieved by the said order, the present petition is filed raising several contentions mainly contending that when the petitioner raised an objection about the admissibility of Exs.P.1 to P.8, the Court did not issue such direction and simply marked documents without collecting stamp duty penalty and apart from that no opportunity was afforded before passing the order impugned in the present petition, and that apart, such direction was issued at the stage, when admissability of the document is challeged, during hearing. Therefore, such order cannot be sustained and prayed to set aside the same.

03. Heard Sri Parsa Ananth Nageswar Rao, learned counsel for the petitioner, at the stage of admission.

04. The main contention of the petitioner is that Exs.P.1 to P.8 are inadmissable in evidence as they are insufficiently stamped and the Court cannot impound those documents after marking and when the arguments are concluded.

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05. Section 33 of Indian Stamp Act, 1899 (for short, 'the Act') is the relevant provision which deals with examination and impounding of instruments. According to it, every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed.

06. As seen from Section 33 of the Act, when the document is produced before any officer, to receive evidence i.e. Judicial Magistrate of First Class or any Judicial Officer or Officer in-charge of the public office is under obligation to impound the document, when the Office or the Court find that it is insufficiently stamped or improperly stamped, subject to other provisions. There is no bar to exercise such power at any time.

07. In the absence of any fetter on the Courts to exercise such power, the order passed by the court at belated stage i.e. after conclusion of argument is not a ground to set aside the same, since it is a loss to the public exchequer. Therefore, on the ground of delay the impugned order is not liable to be set aside.

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08. Even otherwise, according to Section 36 of the Act, Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped.

09. Here the documents are already marked as exhibits without considering the purport of Section 35 of the Act. Even in such case, the admissibility of documents, Exs.P.1 to P.8, cannot be questioned in view of bar under Section 36 of the Act, except by way of revision or in the appeal under Section 61 of the Act.

10. Therefore, such objection cannot be entertained by the Courts at this stage, and on any ground urged by the counsel, the order under challenge cannot be set aside or overturned under Section 482 Cr.P.C. Hence, I find no ground to set aside the order dated 04.10.2016 passed by the II Special Magistrate, Vijayawada, in C.C. No.546 of 2015.

11. In the result, the criminal petition is dismissed.

12. Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26.10.2016
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