

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6779 of 2010

ORDER :

The petitioners are A.1 and A.2 in C.C.No.195 of 2005 on the file of the Judicial Magistrate of First Class, Punganur, Chittoor district, taken cognizance for the offences punishable u/ sec.420 and 423 IPC outcome of a private complaint filed by the 2nd respondent/ complainant u/ sec.200CrPC. Impugning said proceedings, the petitioners herein filed the present quash petition with the contentions in the grounds as well as submissions during the course of hearing that the cognizance taken on a private complaint by the learned Magistrate is unsustainable as it was filed after lapse of 13years from the alleged offence, that they have not executed the alleged mortgage deed, in favour of the complainant and only for blackmailing and to cause damage to their reputation, the complainant falsely implicated them. Further, the complainant himself executed sale deed without their (A.1 and A.2) knowledge with regard to the land in question knowing fully well that said land is already attached in execution proceedings and thereby cheated them. That there is no explanation for the abnormal delay in filing the complaint. Hence, to quash the proceedings.

Heard the learned counsel for the 2nd respondent and also the learned Public Prosecutor for the 1st respondent and perused the material on record including the expression of the Apex Court placed reliance by the petitioners in Thermax Limited and others

Vs. K.M.Johny and others¹ in which it is held that if there is huge delay and in order to avoid period of limitation in civil law, criminal proceedings cannot be resorted. Further held that the complaint was filed therein in 2002 and the alleged dispute pertained to the period from 1993 to 1995 and the respondent No.1 therein tried to circumvent jurisdiction of civil courts which stopped him from proceeding on account of law of limitation, which was impermissible.

The private complaint of the 2nd respondent/ complainant speaks that the father of the complainant had bequeathed his immovable property to his wife, daughters and to the complainant under a registered will dt.09.09.1989 and later he died. As per the will, mother of the complainant by name Hafisa and himself together got joint property of Ac.0-75 cents in Sy.No.114-4 and Ac.0.02½ cents in Sy.No.163-2 within the specific boundaries situated at Melupatla village, likewise the other sisters too derived their respective extents mentioned in the said will. The A.1 being very affluent and influential person having landed property on the eastern side of the land in Sy.No.114-4, in the year 1991 created trouble to them by not allowing to enter into their land and by using force and coercion, dishonestly induced them to execute a registered sale deed, dt.29.06.1991 in the name of A.2 who was not present at all and even all the documents(stamps) were purchased by the A.1 only and further the A.1 forced the complainant and his family members to forego their entire property under the will

¹ (2011) 13 SCC 412

bequeathed by late Amerjan. It further speaks that the mentally unsound minor sister by name Shahanas Begum, of the complainant is shown represented by her mother. While getting the sale deed dt.29.06.1991 no consideration is paid to the complainant by A.1 and on painful request of the complainant the A.1 executed agreement on the very same day stating that the land of 15guntas i.e. Ac.0-37½cents is included in the above sale deed for which no amount is paid to the complainant and on that paid a sum of Rs.5,000/- to the complainant out of Rs.13,000/- and undertook to pay the balance amount within two months failing which both the accused will execute a registered sale deed in favour of the complainant at their expenses but the accused not paid amount nor executed sale deed as agreed above and when approached the A.2, she replied that she is not at all concerned with said sale deed which is a nominal one. The complainant is eaking out by pulling a cycle rickshaw. After understanding fraudulent and dishonest intention of the A.1 and out of despair, the complainant got issued a legal notice dt.28.08.2004 to both the accused but they evaded to receive the same with endorsement that A.1 is absent and there is no such addressee of A.2. Hence, the petition.

From perusal of the record shows that with reference to the material covered supra which no way requires repetition. The registered sale deed was dt.29.06.1991 and as per the defacto-complainant on the same day the A.1 allegedly executed an agreement to pay further amount for part of the extent covered by the sale deed within two months and failing which to re-convey

that part of the extent of Ac.0.15guntas and so far not complied with. If so, even to the knowledge of the defacto-complainant, he could have initiated any legal recourse immediately after Dt.29.08.1991 for so called non-compliance which is the core of allegation of the cheating. The private complaint filed in this case in CFR was on 22.09.2004 only. There is no explanation for said waiting from 1991 to 2004 for about 13 years though there is no limitation for taking cognizance for the offence punishable u/sec.420IPC. In fact, it is sheer a civil dispute which lost the enforceability in civil forum from the bar of limitation which cannot be allowed to be converted into a criminal prosecution merely because there is no limitation for taking cognizance for the offence u/ sec.420IPC. Leave about no ingredients worth that could be made out the offence of cheating in the factual scenario apart from the dispute is of civil nature and the expression of the Apex Court in Thermax Limited(supra) squarely applies to the facts of the case on hand.

Having regard to the above and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.195 of 2005 on the file of the Judicial Magistrate of First Class, Punganur, Chittoor district, against the petitioners/ A.1 and A.2 and they are acquitted. Their bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:25.10.2017
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