

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1460 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/ *de facto* complainant having been aggrieved of the order, dated 10.05.2017, passed in CrI.M.P.No.2435 of 2017 in C.C.No.710 of 2015 on the file of the Court of the learned II Additional Junior Civil Judge-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur.

2. I have heard the submissions of Sri C.Nageswara Rao, learned senior counsel appearing for Sri M.Ravi Kumar, learned counsel for the petitioner/ *de facto* complainant and of the learned Public Prosecutor appearing for the 1st respondent-State of Telangana. I have perused the material record.

3. With consent, this revision case is being disposed of at the stage of admission.

4. The docket order, which is impugned in this revision case reads, verbatim as under:

'Special Vakalat holder of the petitioner present. Petition is allowed on payment of cost of Rs.1,000/- for Mandal Legal Services Authority.'

5. The grievance of the petitioner/ *de facto* complainant is that the above order was obtained by suppressing the orders of the Hon'ble Supreme Court, wherein, the 2nd respondent/ A1 was directed to appear before the trial Court on the next date of hearing, i.e., 25.05.2017. It is also the grievance of the petitioner/ *de facto* complainant that the said order of the Hon'ble Supreme Court was flouted by the 2nd respondent/ A1 and that the learned trial Magistrate, who passed the above said order, on 10.05.2017, in the aforesaid miscellaneous petition filed for recalling of the NBW issued against the 2nd

respondent/ A1, was mislead and that the said order was obtained by playing fraud on the Court and by fraudulent suppression and misrepresentation of facts and also by abusing the process of the Court. However, it is fairly conceded that the aforesaid impugned order was passed by the learned Magistrate holding Full Additional Charge of the post of the learned regular Magistrate when the regular Magistrate was absent, may be because on account of availing leave.

6. Learned Public Prosecutor would point out that according to the case of the petitioner/ *de facto* complainant, the existence of an order of the Hon'ble Supreme Court and certain other facts were suppressed and that by misrepresentation and suppression of facts the impugned order was obtained by the 2nd respondent/ 1st accused when the regular Magistrate was absent and when another learned Magistrate was holding full additional charge of the post of the learned regular Magistrate.

7. It is well settled principle of law that if any judgment or order is obtained by fraud or fraudulent misrepresentation or fraudulent suppression of facts, it cannot be said to be a judgment or order in law. In *A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors.*¹, the Supreme Court observed that before three centuries, Chief Justice Edward Coke proclaimed as follows: 'Fraud avoids all judicial acts, ecclesiastical or temporal.' It is apt to refer to the following settled legal position stated in the aforesaid decision of the Supreme Court. 'A judgment or decree or order obtained by playing fraud on the Court or Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment or decree or order --by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. No judgment of a Court can be allowed to stand, if it

¹ AIR 2007 SC 1546

has been obtained by fraud. Though it is not permissible to show that the Court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between 'mistake' and 'trickery'. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered; but, it can be set aside, if the Court was imposed upon or tricked into giving the judgment. As per fairly well settled legal position, fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in *rem* or in *personam*. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.'

8. In the instant case the issue raised by the petitioner/*de facto* complainant has to be decided on the basis of fraud, which is a pure question of fact. Therefore and in the light of the legal position, the contentions of the petitioner/*de facto* complainant require detailed examination in an enquiry to be conducted in the matter. As rightly conceded, it is not possible to hold a detailed enquiry in this criminal revision case and come to a safe conclusion on the issue as to whether or not the order impugned was obtained by fraud or fraudulent misrepresentation or fraudulent suppression of facts. Therefore, an enquiry by the Court below is necessary for adjudicating the issue raised by the petitioner/*de facto* complainant.

9. On the above analysis, this Court deems it appropriate to dispose of the revision with appropriate directions:

10. In the result, the revision case is disposed of reserving liberty to the petitioner/ *de facto* complainant to approach the trial Court and file an application seeking an appropriate remedy, which the law permits, if the petitioner/ *de facto* complainant is so advised and so desires. It is needless to state that if any such application comes to be filed by the petitioner/ *de facto* complainant, the trial Court shall dispose of the same in strict accordance with the procedure established by law, however, after giving an opportunity of hearing to the 2nd respondent/ A1.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

12th June 2017
RAR

