

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.4715 of 2017

ORDER:

Heard learned counsel for the petitioner/accused No.3 and also learned Public Prosecutor representing the 1st respondent-State. Notice ordered to 2nd respondent-complainant returned as unclaimed is a sufficient service, hence taken as heard and perused the grounds urged in the quash petition and the contents of the FIR in crime No.294 of 2017 of Medipally Police Station, Rachakonda, registered for the offences punishable under Sections 406, 420, 384, 418, 423, 425, 426, 464, 427, 421 & 120-B r/w 34 IPC, which is outcome of the private complaint of the 2nd respondent-defacto complainant, which was referred by the learned Magistrate to the police under Section 156 (3) Cr.P.C.

The contentions in the quash petition are that the present complaint is an abuse of process and purely a civil dispute and it is belated one and there is no sustainable accusation against the petitioner/A.3 and there is already a civil suit O.S.No.1561 of 2013 filed for perpetual injunction by the husband of the petitioner against the defendants therein in respect of properties and subsequently it was decreed on 06.04.2017, where she was impleaded as co-plaintiff since her husband died on 24.02.2015 and sought for quashing of the proceedings.

Learned Public Prosecutor representing the State states the investigation is in progress and there is nothing to interdict the investigation.

Even from the reading of the civil court judgment supra filed by petitioner and her husband as 2 plaintiffs against the 3 defendants including the defacto complainant T.V.Chary as D.3 among P.Yadigiri and Ch. Rajesham for permanent injunction in respect of house bearing No.2-2-18/18/4/14-A, admeasuring 150 square yards situated at DD Colony, Bagh Amberpet, Hyderabad, that was decreed. In fact as per the private complaint averments the sale deed dated 27.02.1998 was executed by one Ranga Rangaiah father of A.1 as GPA holder of the original pattedars who are Lws.1 to 4 and there are protected tenants also represented by GPA holder A.3 in favour of LW.3 w/o T.V. Chary, defacto complainant for plot No.205 in S.No.33/2 of 200 square yards of Chengicherla Village, Ghatkesar Mandal, Ranga Reddy District, and the sale deed was cancelled since earlier execution of sale of plot No.289-A. It is the averment that under registered sale deed dated 20.06.2001, the accused as GPA holders of the original vendors in favour of the complainant for plot Nos.289 & 289-A in that S.No.33/2 of Chengicherla for 367 square yards. Referring to 2 sales, it is the averment that the sale transaction dated 01.05.1989 executed by the pattader through GPA Shaik Meera and Shaik Kaseem Shareef to one Smt. Ameena Kishore for plot Nos.196 & 205 for 400 square yards. The complainant came to know of said plot No.205 in S.No.33/2 sold to the complainant for 2nd time and he cause issued notice dated 30.07.2008 through his counsel to the accused persons and the original pattader and the protected tenants and it is alleged as the offence of cheating. The sale transaction even according to the complainant were of the years between 1989 to 2001 and it is already known to the

complainant and issued a legal notice dated 30.07.2008 and already a civil suit for injunction by A.3 and her husband filed in the year 2013 from what is referred supra, the filing of the private complaint on 28.11.2016 after trial is in progress of the civil suit is nothing but abuse of process practically converting a civil litigation with criminal flavour. Apart from it there is no mandatory requirement of filing of affidavit earlier giving of police report with proof regarding it as laid down in **Priyanka Srivastav Vs. State of U.P.**¹ and **Ramdev Food Products Private Limited Vs. State of Gujarat**² including from perusal of the complaint in referring the same by the learned Magistrate under Section 156 (3) Cr.P.C., sufficient to say the crime against the petitioner therefrom is unsustainable and liable to be quashed.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in crime No.294 of 2017 of Medipally Police Station. It is needless to say if no affidavit filed, the crime registered against other accused also by virtue of this order ceases as quashed for non-compliance of filing of affidavit before referring the private complaint to police by order of the learned Magistrate under Section 156(3) Cr.P.C. It is however in such event no way a bar to take fresh cognizance against other accused. It is needless to say if there is any affidavit filed with the private complaint by the complainant before the trial Court, this will not operate against other accused on un-sustainability for any such compliance of the mandatory requirement supra if shown complied. It is even otherwise so far as the petitioner/A.3

¹ 2015 (6) SCC 287

² (2015) 6 SCC 439

concerned from the facts supra the prosecution is held unsustainable and continuation is nothing but abuse of process in quashing the same.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.10.2017
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