

THE HONOURABLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.1682 of 2011

ORDER :

This criminal petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings in Crime No.54 of 2010 of Jaipur Police Station, Adilabad District.

2. Heard learned counsel for the petitioner. Though notice was served to 2nd respondent, none appeared on his behalf.

3. Learned Public Prosecutor requested time till next week on the ground that file is misplaced, and the same is rejected.

4. Petitioner is accused No.4. A perusal of the record shows that the complainant/respondent No.2 filed a private complaint under Section 200 read with Section 156(3) of Cr.P.C. against the accused for the offences under Sections 417, 419, 420, 423, 447, 427, 290 and 506 read with Section 34 of I.P.C. and Section 3(1)(iv)(v) and (x) of SCs & STs (POA) Act, 1989 (for short 'the Act').

5. The allegations in the complaint are that the father of the complainant Lachaiah was the original owner, pattadar and possessor of Acs.6.38 guntas in Sy.No.342 of Mittapelli Shivar. He died 10 years back. The complainant and his

brothers acquired rights in the ancestral property. Subsequently, A1 in collusion with A4 impersonating themselves as complainant and his brothers, with a common dishonest intention created false and fake registered sale deed showing the name of A1's father as Lachaiah and created sale deed dated 22.09.2006 in favour of A2 and A3.

6. The further allegation is that the petitioner/A4 while working as Village Revenue Officer of Mudigunta Village by the date of fraudulent sale deed dated 22.09.2006, had joined hands with A1 to A3, assisted them and cheated the original owners. In fact neither the complainant nor his brothers ever sold the property in favour of A2 and A3. There is a serious allegation that A1 got created false and frivolous registered sale deed dated 22.09.2006 with the assistance of the petitioner/A4 in favour of A2 and A3 in respect of land of Acs.6.38 cents in Sy.No.342 of Mettapelli Shivar. Basing on the false and fabricated sale deed, A2 and A3 applied for mutation and A4 gave false report for such mutation. Subsequently, the names of A2 and A3 have been mentioned in the pahani patraks for the years 2007-2008 and 2008-2009.

7. Learned counsel for the petitioner submits that the petitioner did not commit any offence under S.Cs. & S.Ts.

Act or I.P.C. and that he issued the certificate while discharging his duties and no departmental proceedings were initiated against him.

8. Learned counsel for the petitioner relied upon the decision of Apex Court in ***Mohammed Ibrahim and others v. State of Bihar and another***¹ wherein it is held that:

“The sale deeds executed by the 1st appellant, clearly and obviously do not fall under the second and third categories of “false documents”. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant’s land (and that A2 to A5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.”

9. In the case on hand, there is a specific allegation that the property is the ancestral property belonging to the complainant and his brothers. A1 having knowledge that the complainant and his brothers are the owners of

¹ (2009) 8 SCC 751

property, fraudulently represented that he is the son of Lachiah and created registered sale deed dated 22.09.2006 in favour of A2 and A3. A4 gave a false report for mutation of the land in question in favour of A2 and A3. Subsequently, the names of A2 and A3 have been mentioned in pahani patraks for the years 2007-2008 and 2008-2009. A1 with the knowledge that he is not the owner of the property by impersonating himself as son of Lachiah executed registered sale deed dated 22.09.2006 in favour of A2 and A3 and A4 helped them in getting mutation by issuing fraudulent sale deed in favour of A2 and A3.

10. Learned counsel for the petitioner also relied on the decision of this Court in ***Jasthi Srinivasa Rao v. State of Andhra Pradesh and another***² wherein it is held that:

“...mere giving report against the son of the *de facto*- complainant alleging commission of theft of mangoes, prosecuting the petitioner for the offence under Section 3(i)(ix) and 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 342 and 323 of the Indian Penal Code is abuse of process of law since the basic ingredients of the offence alleged under the prevention of atrocities, are not attracted and if the investigation pursuant to the report lodged by the *de facto*-complainant is allowed to be continued against the petitioner, it would result in miscarriage of justice.”

11. In the instant case, the specific allegation against the accused is that A1 in collusion with A2 to A4 hatched up a plan to knock away the land of the complainant and his

² 2016(1) ALD (CrL.) 517

brothers and with a common dishonest intention, accused created false and fake registered sale deed alleged to have been executed by Ganta Shankar showing his father's name as Lachaiah in favour of A2 and A3 and in fact, actual name of the alleged executant A1 is Manubothula Shankar, son of Ramaiah, whereas the name of father of complainant is Bheemini Lachaiah and thus A1 fraudulently with dishonest intention to get monetary gain, had executed registered sale deed No.8149/2006, dated 22.9.2006 in favour of A2 and A3 by impersonating father of the complainant and his brother.

12. It is further alleged by the complainant that the petitioner/A4, who was working as VRO of Mudigunta Village at that time, joined hands with A1 to A3, assisted them and cheated the original owner. A4 gave a false report for mutation of the land in favour of A2 and A3. Subsequently, basing on the said report, the names of A2 and A3 are mutated in the revenue records 2007-2008 and 2008-2009.

13. After forwarding the FIR under Section 156(3) Cr.P.C. the police registered a case in Crime No.54 of 2010. The first column of the complaint shows A1 to A4 committed the offences under Sections 417, 419, 420, 423, 447, 427, 290 and 506 read with Section 34 of I.P.C. and also shows that

A2 to A4 committed the offence under Section 3(1)(iv)(v) and (x) of SCs & STs (POA) Act, 1989. Even though, the offence under Section 3(1)(iv) (v) and (x) of the S.Cs. & S.Ts. (PoA) Act was shown against the petitioner-A4, the allegations made against the petitioner-A4 would not attract the ingredients of offence under SCs & STs Act, but the alleged offences under I.P.C. sections are concerned, there is *prima facie* material to prosecute him.

14. In view of the specific overt acts attributed to the petitioner-A4 in the complaint for the offences under Sections 417, 419, 420, 423, 447, 427, 290 and 506 read with Section 34 of I.P.C. and as there is *prima facie* material against the petitioner/A4 for the alleged offences under I.P.C. sections, the proceedings against the petitioner/A4 in Crime (FIR) No.54 of 2010 on the file of the Jaipur Police Station, Adilabad District shall go on for the alleged offences under I.P.C. sections.

15. Whereas, even though the offence under Section 3(1)(iv) (v) and (x) of the S.Cs. & S.Ts. (PoA) Act was shown against the petitioner-A4, the allegations made against the petitioner-A4 would not attract the ingredients of offence under S.Cs. & S.Ts. Act, therefore, the proceedings against the petitioner/A4 in Crime (FIR) No.54 of 2010 on the file of the Jaipur Police Station, Adilabad District for the alleged

offence under Section 3(1)(iv)(v) and (x) of the S.Cs. & S.Ts.
(PoA) Act are hereby quashed.

16. Accordingly, the Criminal Petition is disposed of.

Consequently, Miscellaneous Petitions, if any, pending
shall stand closed.

JUSTICE N.BALAYOGI

Date : 20.10.2017.
ssp

