

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

CRIMINAL PETITION No.5258 of 2010

ORDER:

The petitioners 1 to 8 are the accused in C.C.No.2242 of 2008 on the file of III Additional Judicial Magistrate of First Class, Kothagudem, and the 2nd respondent is the complainant. It is on the private complaint of the complainant supra that was referred to police, the police registered crime No.157 of 2002 and from the police final report, the learned Magistrate has taken cognizance on 21.05.2003 as C.C.No.1960 of 2003 for the offences punishable under Sections 120-B, 467, 468, 471, 477 r/w 34 IPC. Impugning the said cognizance order the quash petition is filed.

This Court while ordering notice before admission on 22.06.2010, granted interim stay for four weeks of all further proceedings of C.C. and extended later.

Heard learned counsel for the petitioners/accused and the learned counsel for the 2nd respondent-complainant and also learned Public Prosecutor representing the State and perused the material on record.

The private complaint dated 13.03.2002 reads that the accused conspired together to knock away the house property of the complainant and occupy. It is further averred that the complainant is adopted son of Ch. Rajamouli, A.1 & A.2 are sons of A.3 & A.4, A.5 & A.6 are close friends of A.1. A.7 is known litigant in creation of false documents and A.8 is the stamp vendor and are followers of A.1, A.5 & A.6. The complainant shifted from Warangal to Kothagudem on 12.12.1954 and doing cloth business. A.3 was brought from Warangal in establishing a cloth business by

him in 1958. The complainant with hard earned money purchased the house property bearing No.6-2-100 at Chinna Bazar, Kothagudem, in the name of his father Rajamouli that is also entered in municipal records, as complainant in his childhood adopted by Rajamouli and complainant established his cloth shop in said house property in front portion western side by residing in eastern side portion of the family, said Rajamouli also in his lifetime executed a registered will in favour of the complainant bearing No.35/1988 dated 21.11.1988 and he breathed last. Later on 28.04.1990 as the last testament of him, the bequeaths came into operation therefrom as complainant in pre occupation could not get his name mutated in municipal assessment records he approached further mutation. However the accused prepared a forged document as if a will deed dated 09.04.1990 and as if Rajamouli executed will in favour of A.1 bequeathing the house property by forgery for purpose of cheating and cause mutated in using the forged document before 11.03.2002, hence to take action.

The complainant in that complaint supra did not state what is the date or at least the month of mutation of the said property on the alleged forged will in favour of A.1 as if executed by Rajamouli on 09.04.1990 and not even stated as to when he came to know and when he applied to municipal authorities and with what material in fact the police final report shows that A.1 to A.4 of whom A.1 & A.2 are sons of A.3 & A.4, to take advantage of the complainant is issue less conspired with A.5 to A.8 to knock away the said house property of late Rajamouli and fabricated and forged a will as if executed by Rajamouli on 09.04.1990 that is

scribed by A.7 and the non judicial stamp pertains to 1990 old one supplied by A.8, A.5 & A.6 attested and A.1 used as if genuine the forged document, thereby they are liable. In the course of police final report investigation, 8 witnesses are examined other than 3 Ios referred in registering the crime, investigated and filed final report viz., complainant Ekambaram, his wife Sumathi and the circumstantial witnesses P.Dharma Rao, I.Narayana, P.Salman, S.Suresh Rao, K.Chandramouli & D. Mallaiah all of Kothagudem. Even from the statements particularly of the complainant and from the complaint averments the alleged forged will dated 09.04.1990 is in favour of A.1 as if executed by so called adopted father of A.1 by name Rajamouli and A.5 & A.6 are the attestors, A.7 is scribe & A.8 supplied old non judicial stamp to show the document with anti date, shown created as per the allegations. Even in the statements of Lws.1 & 2 the date when he came to know did not mention and what he stated is he came to know from the Municipal Commissioner when chosen to mutation to his name about mutated in the name of A.1 Manohar based on a will. In the statement of LW.3-Chandramouli it is mentioned on 26.02.2002 along with Ekambaram, he and Mallaiah went to Municipal Office for mutation and informed by Municipal Commissioner of A.1 Manohar cause mutated in his name based on alleged will dated 09.04.1990. Rajamouli undisputedly died in 1990 on 28.04.1990. After that from the registered will in existence in favour of complainant he knows the same to mutate the property in his name. Even the police investigation no where shows when the mutation in the name of A.1 in the municipal records was effected based on the alleged forged will dated 09.04.1990, there is nothing

even from the investigation by examination of any municipal records as to who applied for mutation among the accused if at all by anybody to say using as genuine any forged document apart from showing of the so called will in question is a forged one for that even, but for saying there is a registered will in the name of the complainant executed by Rajamouli, there is nothing to say the alleged unregistered will dated 09.04.1990 does not contain signature of Rajamouli or it is a forged one without which if at all Rajamouli executed any such will as a last will even unregistered it is a matter to be decided in a civil dispute and without that there is no material to say the version of the complainant of the alleged will dated 09.04.1990 is a forged other than oral version of the complainant and his wife. In the absence of showing forgery much less for cheating and using as genuine a forged document, the prosecution ultimately will not with stand, thereby there is nothing to continue the proceedings from the material on record lacks sustainable accusation to frame a charge for any of the offences.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings of C.C.No.2242 of 2008 against the petitioners/accused without prejudice to the available civil rights of the parties. Bail bonds of the accused/petitioners if any stand cancelled.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.10.2017
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