

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION NO.8921 OF 2010

ORDER

The petitioner to the quash petition is A.1 of Cr.No.40 of 2007 pending on the file of the Addl.Judl.Magistrate of First Class, Srikalahasthi. The Criminal Petition is filed against the order in CrI.M.P.No.3097 of 2009 of the learned Magistrate in the pending crime, dt.29.04.2010 on the application of Shaik Abdul Khadar Basha. In that petition, said SAK Basha shown 8 accused including the petitioner herein as A.1. The averments therein show on 03.04.2007 the Sub Registrar, Srikalahasthi by name Gangireddy appeared before the Inspector of Police, Srikalahasthi Urban and presented a written complaint stating that he received complaint from the petitioner SAK Basha that A.1 to A.3 herein by name Venkataramana @ Chalapati, B.Ramachandraiah and M.Murali, colluded with each other and cheated by showing Maratha Kanakamma younger mother of A.1 as Shaik Masthan Bee and executed a sale deed for Ac.0.14cents in Sy.No.163/ 9 of Avalanadu tank of Srikalahasthi Mandal and the same is registered as 156/ 2007,dt.05.02.2005 and knowing the same, the victim by his name SAK Basha and his relatives went to A.1-venkataramana and demanded for cancellation of the sale deed and on 04.04.2005 the sale deed was cancelled. The petitioner-Basha came to know that the accused again cheated and the cancellation of deed executed by Kanakamma-A.4 in favour of A.1 has no legal consequences and the cheating by impersonation stands. Based on said petition of Basha, on 02.04.2007, the Sub Registrar, Srikalahasthi

has prepared a complaint and forwarded to SHO, Srikalahasthi II Town Police Station who registered Cr.No.40 of 2007 for the offence u/sec.419IPC on 03.04.2007. It is during investigation said Basha sought for DNA test as A.1 made his mother's sister Kanakamma-A.4 as Muslim lady by impersonated her and creating document.

It is pending the investigation, the application is filed by the defacto-complainant and not by prosecution and the learned Magistrate observed that the police did not seize the documents and not send to the fingerprint expert for comparison to prove forgery and police report saying that they completed investigation without sending the documents and without obtaining expert's opinion for reasons best known and A.5 is mother of A.1 and A.4 is younger mother of A.1 and it is saying to know the involvement of A.1 in said impersonation through them thereby ordered for DNA examination by allowing the petition.

The wording of Section 311-A of Amended CrPC, it is the only enabling provision if at all pending investigation which reads as follows:

"311A. Power of Magistrate to order person to give specimen signatures or handwriting:- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding.

The crime is of 2007. The impugned order of the learned Magistrate no way shows the accused persons were arrested for ordering the DNA test as part of investigation. The signatures or handwriting may even include like from the wording of Section 73 of the Indian Evidence Act, to finger impressions even taken so. What is the pre-requisite is the arrest of the person, no order shall be made unless the person has some time been arrested in connection with the investigation of the case on hand. Section 53 CrPC otherwise provides is examination of accused by Medical Practitioner by request of the police officer. Here, it is not the request of the police officer but for of not even defacto-complainant-Sub Registrar but by so called Basha who is not even a direct victim for the learned Magistrate so to order. Needless to say even after the investigation and final report, the police officer is entitled to obtain permission of learned Magistrate for further investigation if at all necessary by invoking Section 173(8) CrPC. The Court within its power u/ sec.73 r/w 45 of the Indian Evidence Act, can otherwise, no doubt order if felt of its own such a necessity by invoking Section 165 of the Indian Evidence Act also.

Having regard to the above, the order passed is without such foundation that too not even at request of the police officers who are investigating the case much less of defacto-complainant and not even a direct victim is unsustainable and is liable to be set aside.

In the result, the Criminal Petition is allowed by setting aside the order dt. 29.04.2010 in CrI.M.P.No.3097 of 2009 on the file of the learned Magistrate in the pending crime (Cr.No.40 of 2007). The petitioner in CrI.M.P.No.3097 of 2009 is given liberty to invoke available remedies for such examination if necessary at any future stage during trial.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:27.10.2017
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Dr. B.SIVA SANKARA RAO J,