

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2299 of 2017

ORDER:

The petitioner is A1 of C.C.No.434 of 2015 on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri, where the learned Magistrate taken cognizance for the offences punishable under Sections 420, 447 r/w 34 I.P.C., which is outcome of the private complaint of 2nd respondent referred to the police for investigation by the learned Magistrate under Section 156(3) Cr.P.C., from which the police registered as Crime No.78 of 2008 on 21.02.2008. It is after investigation the police filed final report, from which the learned Magistrate taken cognizance for the offences supra.

Undisputedly, from hearing of both sides covered by CrI.P.No.11390 of 2011 filed by A2-Secretary, representing the Society to quash the proceedings and the same was allowed quashing the proceedings covered by the F.I.R. and the police final report, while the case was pending as C.C.No.500 of 2008. It is vide quash petition order dated 02.07.2015. The *de facto* complainant/ 2nd respondent herein did not impugn the same, though he contested in inviting the adverse order that made final in quashing the proceedings.

So far as the petitioner/ A1 is concerned, even according to the *de facto* complainant from the very complaint averments at paras 2 and 3 referred to the police for investigation that A1 trespassed into the property and he came to know that in collusion with other accused particularly of A2, a registered sale deed No.7901 of 2007 dated 11.12.2007 is brought into existence.

Needless to say, even from the undisputed facts that subsequent to that, the *de facto* complainant filed O.S.No.431 of 2013 for cancellation of the sale deed apart from suit for injunction in O.S.No.1057 of 2008 and those were decreed, no way make A1 liable for the criminal offence of trespass, even from the very complaint averments under the guise of the sale deed. It is the contention of A1 that he is a bonafide purchaser for consideration.

Hence, there is no offence of cheating including from the expression of the Apex Court in Md.Ibrahim & Ors vs. State of Bihar & another¹ apart from the very proceedings of cognizance taken against A2 quashed by order of this Court in CrI.P.No.11390 of 2011 dated 02.07.2015. Once such is the

¹ 2009(8) SCC 751

case, there is no offence of cheating against the petitioner/ A1 to attract Section 420 I.P.C. to continue the proceedings apart from even Section 447, for which there must be not mere entry under the guise of claiming bonafide owner, but, there must be with criminal intention without any right with further acts of annoyance or intimidation. Here, it is not a case of the petitioner/ A1 committed any such act.

Having regard to the above, the Criminal Petition is allowed by quashing the proceedings against the petitioner/ A1 in C.C.No.434 of 2015 on the file of the XX Metropolitan Magistrate, Cyberabad at Malkajgiri, and his bail bonds if any shall stand cancelled.

Pending miscellaneous petitions, if any, shall stand closed.



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.08.2017
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