HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION M.P. Nos,17689 & 19274 OF 2016
IN/AND
CRIMINAL PETITION No.15611 OF 2016

COMMON ORDER:

Requesting to quash First Information Report No.151 of 2016 of Rebbena Police Station, Kumrambheem District, Telangana, by exercising the power under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioners filed the present Criminal Petition.

2. The petitioners viz., Vasireddy Naga Rama Devi alias Rama Gandhi, Vadlapatla Vinaya Kumari, Kilaru Prabhakar Rao, Abbineni Anjanamani, Vasireddi Gandhi, Vadlapatla Amarnath Chowdhary, G.V.K. Prasad, Musunuri Gopi and Mandru Venkateshwarlu, respectively who are arraigned as accused Nos.1 to 9, respectively, and respondent No.2 herein viz., Kilaru Raghavendra Rao, who is the *de facto* complainant, are interrelated; in the sense, petitioner Nos.1, 2 and 4 are sisters of the *de facto* complainant, petitioner No.3 is brother, petitioner Nos.5 and 6 are husbands of petitioner Nos.1 and 2 respectively, petitioner No.7 is their nephew, petitioner Nos.8 and 9 are said to be active supporters of petitioner Nos.1 to 7.

3. The petitioners alleged to have committed the offences punishable under Sections 420, 468 and 416 read with Section 34 of the Indian Penal Code, 1860 (IPC).

4. Heard Sri K. Chidambaram, learned counsel for the petitioners, Sri V. Ravi Kiran Rao, learned counsel for the *de facto* complainant - respondent No.2, and the learned Additional Public Prosecutor for the State of Telangana. Perused the material on record.

5. The *de facto* complainant, in fact, filed a private complaint under Section 200 of Cr.P.C., before the Judicial Magistrate of First Class, Asifabad. It was referred under Section 156(3) of Cr.P.C. by the learned Magistrate to the Station House Officer, Rebbena Police Station, Kumrambheem District, who registered the aforesaid First Information Report.

6. Substantially, the accusations directed against the petitioners as can be culled out from the complaint are that, though, the *de facto* complainant was not actually available in Indian when the mutation proceedings were pending before the Mandal Revenue Officer and did not make any statement, petitioner Nos.1 to 7 herein with the active connivance of other petitioners succeeded in getting mutation registry effected in their favour, despite the fact that earlier, there was settlement deed among the members of the family effecting division of immovable properties by metes and bounds and pattedar passbooks were obtained even concerning the land fallen towards the share of the *de facto* complainant which was still in his possession, cultivated through one Gutta Gangadhara Rao, who is no other than the eldest brother-in-law of the *de facto* complainant, till 2000, and, thereafter, through Gutta Sudhakar, eldest son of Gutta Gangadhara Rao. The

case of the *de facto* complainant is that he learnt these facts only on 20.07.2014 and he has filed a writ petition in W.P. No.12017 of 2016 and this Court while granting interim direction through W.P.M.P. No.15081 of 2016 on 12.04.2016, even opined that there were serious allegations of fraud played by petitioner Nos.1 to 4 and lack of application of mind on the said aspect by the respondent – officials therein. This has been the main grievance in the complaint requiring investigation into the aforesaid allegations.

7. The learned counsel for the petitioners would mainly submit that the *de facto* complainant in an attempt to convert a civil case into criminal action, filed the present F.I.Rs., utilizing the process of Court. Learned counsel would submit that mutation proceedings were effected long back and fourteen (14) years thereafter, the *de facto* complainant has come forward to re-agitate alleging fraud and baseless allegations and that the appropriate remedy, which lies elsewhere, is not resorted to and with the dishonest intention attempted to initiate criminal action.

8. The learned counsel would submit that even the mutation order passed by the Mandal Revenue Officer on 15.04.2000, was confirmed in the appeal filed by the *de facto* complainant on 10.02.2015 and the present petition was filed in October, 2016, after lapse of 16 years which, by itself would reflect fraudulent and dishonest intention of the *de facto* complainant to harass the petitioners. It is his submission that the *de facto* complainant has

taken the plea of cheating and forgery for the first time in the present complaint with *mala fide* intention to convert the civil dispute into crime and to dictate terms to the petitioners under the guise of registration of F.I.R., which is nothing but abuse of process of law and none of the offences punishable under Sections 416 and 420 of IPC would attract, much less, the offence punishable under Section 468 of IPC.

9. It is also his submission that the learned Magistrate, forwarded the complaint in a routine manner even without there being any mention as to why the *de facto* complainant did not approach the police first and without filing any affidavit as per the law declared by the Hon'ble Supreme Court, and, therefore, the F.I.R. is liable to be quashed.

10. When the present Criminal Petition along with Criminal Petition M.P.No.17689 of 2016 came up for hearing for the first time on 2.11.2016, this Court granted *ad interim* stay of all further proceedings, in view of pendency of Writ Petition No.12017 of 2016 against the orders of the Joint Collector, for a period of three months. The said order was extended from time to time and arguments were heard on 13.3.2017.

11. The *de facto* complainant's case is set out in the vacate petition i.e., Criminal Petition M.P. No.19274 of 2016. He has given vivid details in the direction of showing that there are *prima facie*

allegations to prove the ingredients of the offences alleged against the petitioners. Substantially, his case is that their mother Kilaru Krishnavenamma was the absolute owner and pattadar of Ac.56-05 cents comprised of Sy. Nos.17 to 21 and 23 to 25. They are altogether nine children to their parents i.e., four sons and five daughters. Their mother, Kilaru Krishnavenamma died on 1.9.1985. A division of properties had taken place among the family members in the presence of elders and a Family Settlement Deed was reduced into writing on 27.2.1988 signed by all of them. In the said Settlement Deed, Smt. Gutta Swarna Kumari and Smt. Kalagara Jhansi Laxmi, their sisters did not claim any right and Smt. K. Uma Devi, wife of the eldest brother of the *de facto* complainant and the wife of the *de facto* complainant, namely, Smt. K. Baby Sarojini Devi were given shares and he was allotted an extent of Ac.9-14 cents, whereas his wife was allotted an extent of Ac.5-00 cents. Later, what transpired has been narrated by him elaborately.

12. Sum and substance has been that he has been in U.S.A. being Doctor by profession for about 42 years staying at Flint, Michigan State, U.S.A. and during his business one Gutta Gangadhar Rao, who is his eldest brother-in-law, being the husband of his sister - Smt. Gutta Swarna Kumari, used to look after the said lands till 2000 and thereafter, the eldest son of Sri G. Sudhakar has been cultivating the lands till date and when petitioner No.7 and some others tried to forcibly occupy the lands, he filed O.S. No.44 of 2014 on the file of

Senior Civil Judge, Mancherial. Even an *ad interim* injunction was granted in the said suit and it is still in force. According to him, the petitioners surreptitiously got mutated their names, including the extents allotted to him and his wife, impersonating and making statements purported to have been made by them and playing fraud on him, his wife and on the Revenue Authorities, obtained mutation proceedings in their favour. He states that he learnt the same only when the written statement was filed in the suit about the fraud and he, in fact, preferred an appeal before the Joint Collector, Adilabad, but lost the case as the Joint Collector stated in his order that statements were occurring, though, he did not make the statement and somebody impersonated and forged his signatures in the statements. Thereafter, he obtained certified copies of the relevant proceedings by making an application under the Right to Information Act, 2005 and he invoked the jurisdiction of this Court by filing W.P. No.12017 of 2016 challenging the proceedings of the Joint Collector, and this Court passed the order, which is extracted by him, thus:

> "Learned counsel for the petitioner states that even though the petitioner is living in abroad, by impersonation a statement was recorded by the 4th respondent and on the basis of which mutation was made in the revenue records in favour of respondents 5 to 8. He further states that the signature on the said statement purporting to be the signature of the petitioner does not belong to him. The petitioner is also relying on a Family Settlement Deed dated 27.02.1988 executed as the basis for his claim in respect of the subject land.
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> Since there are serious allegations of fraud played by respondents 5 to 8 and the lack of application of mind on this aspect by the respondents, there shall be interim direction as prayed for."

13. Later, when he made an application in the Office of the Joint Collector under the Right to Information Act, 2005 to provide (1) Application form (2) Copies of Notices (3) Notice published and (4) Statements recorded, but, surprisingly, the Tahsildar, Rebbena Mandal issued Memo No.RTI/14/2015, dated 31.3.2015, stating that the information sought by him "was not available in his office, and as such he is unable to furnish the information and also informed as and when information is available, the same will be furnished to me". That is how, he filed a complaint for the aforesaid offences narrating the events and certain other events which, of course, are unnecessary to mention. In view of the main allegation of impersonation and making statements and forging the signatures of the *de facto* complainant and his wife and playing fraud not only on the *de facto* complainant and on his wife, but also on the revenue authorities. When looked at these allegations, certainly, they are serious in nature which require a thorough probe by way of conducting investigation to unravel the truth. The *de facto* complainant in fact filed copies of Passport and Visa to show that he was not present in India during the relevant period.

14. The main submission of the learned counsel for the petitioners is that no affidavit is filed though the private complaint is made. His submission is that a civil dispute is attempted to be converted into criminal action and when civil proceedings are pending

before this Court the petitioners are entitled to seek quashment and the First Information Report is liable to be quashed.

15. The learned counsel for the petitioners would submit that no affidavit is filed along with complaint filed and thereby flouted the law laid down by the Hon'ble Apex Court.

16. Per contra, the learned counsel for the *de facto* complainant, Sri V. Ravi Kiran Rao, would submit that it is a clear case of impersonation with forged signatures of the *de facto* complainant and his wife to make a wrongful gain causing wrongful loss to the *de facto* complainant and his wife and played fraud on the authorities and certainly it cannot be viewed that a civil case is converted into criminal action. He placed reliance in **Ganga Dhar Kalita v. State of Assam**[1], **Arun Bhandari v. State of U.P.**[2], **Kamaladevi Agarwal v. State of W.B.**[3], **Vinod Raghuvanshi v. Ajay Arora**[4] and **S. Krishnamoorthy v. Chellammal**[5].

17. At the outset, it is observed that the petitioner has not filed the order passed by the learned Magistrate under Section 156 (3) of the Code referring the complaint to the 1st respondent in the present petition to examine whether the learned Magistrate has examined the

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[1] AIR 2015 SC 2304
[2] (2013) 2 SCC 801
[3] AIR 2001 SC 3846
[4] (2013) 10 SCC 581
[5] (2016) 2 SCC (Cri) 415 = (2015) 14 SCC 559

complaint and other material papers and the reasons to refer the complaint to the police under Section 156(3) of the Code.

18. Turning to the fact situation occurring in the present case, allegations of impersonation and forgery have been projected in the affidavit filed in the vacate petition by the *de facto* complainant. He has also filed the copies of passport to show that himself and his wife were not available in India when the statements purported to have been made and signed by them before the revenue authorities, basing on which alone the primary authority passed orders in favour of the petitioners 1 to 7, leading to the revisional authority i.e., the Joint Collector also confirming it.

19. In **Ganga Dhar Kalita** (1 supra) where somewhat in identical fact situation occurring in the present case projected by the *de facto* complainant, the Hon'ble Supreme Court observed in paragraph-8 thus:

> "8. The allegations made in the First Information Report disclose that there are serious allegations against the appellant (accused) that he fraudulently got executed the power of attorney, and Kaustav K. Kalita was minor (aged nine years) on the date when the deed was said to have been signed by him. It is also alleged that respondent No.5 Yuva Raj Borgohain, who is said to be another person who executed the power of attorney, was away from India on the date of alleged execution of the Deed."

Further, the Hon'ble Supreme Court in paragraph-11 ruled thus:

> "11. Having considered the law laid down by this Court, as above, and further considering the facts and circumstances of the case and seriousness of the allegations made against the accused, particularly that one of the persons said to have executed the power of attorney was minor, and another was away from India, in our opinion, even if the civil suit was instituted by the complainant, the High Court committed no error of law in declining to interfere with the criminal proceedings initiated against the appellant in the present case."

20. In **Arun Bhandari** (2 supra), the Hon'ble Supreme Court held in paragraph-34 thus:

> "34. Therefore, we are disposed to think that the High Court, while exercising the extraordinary jurisdiction, had not proceeded on the sound principles of law for quashment of order taking cognizance. The High Court has been guided by the non-existence of privity of contract and without appreciating the factual scenario has observed that the wife was merely present. Be it noted, if the wife had nothing to do with any of the transactions with the original owner and was not aware of the things, possibly the view of the High Court could have gained acceptation, but when the wife had the power of attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficult to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of Respondents 2 and 3 would show that a prima facie case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. That being the position, the decision in *Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168* which is commended to us by Mr Sharma, learned Senior Counsel, to which we have adverted to earlier, does not really assist the respondents and we say no after making the factual analysis in detail."

21. In **Kamaladevi Agarwal** (3 supra) where civil suits are pending, the Hon'ble Supreme Court, while setting aside the order of quashment passed by the High Court observed that criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

The offences alleged therein were punishable under Sections 465, 467, 468, 471 & 120-B of IPC.

22. In **Vinod Raghuvanshi** (4 supra), the learned counsel for the *de facto* complainant refers to paragraphs 26, 29 and 30 thus:

> "26. Thus, it is evident that for taking cognizance or issuing process in a complaint case, the court must have merely a prima facie satisfaction that there is some material on record to proceed against the accused. In the instant case, the CJM, Bhopal issued process after being fully satisfied that

some material was available on record to proceed against the appellant and others.

29. In *Umesh Kumar v. State of A.P. (2013) 10 SCC 591* this Court held as under:

> "20. … The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial …..
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> 33. Thus, in view of the above, the order of the High Court impugned before us cannot be termed as a final decision. The order is subject to further order which could be passed by the trial court under Section 216 CrPC, on the basis of the evidence to be led during trial. If the impugned order is dubbed as having attained finality, the provisions of Section 216 CrPC would render otiose/nugatory. Thus, the same is to be read that the said order had been passed taking into consideration the material which was available '*at that stage*' and it is still open to the trial court to add or alter the charges according to the evidence produced before it." (emphasis in original)

30. It is settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not 'kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the compliant are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage."

The offences alleged were punishable under Sections 420 and 120-B of IPC.

23. In **S. Krishnamoorthy** (5 supra) touching the scope of Section 482 of the Code held in paragraphs-6 & 7 thus:

"6. In *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy (2011) 12 SCC 437,* this Court, explaining the law on the scope of Section 482 of the Code, has observed, in para 32, as under: (SCC p.448)

> "32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceeding is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal."
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> 7. In view of the above position of law, we have no option but to set aside the order passed by the High Court as it has entered into highly disputed questions of fact and concluded that the material before it was sufficient to cause reasonable suspicion in the case of the complainant. That is not the ground on which powers under Section 482 of the Code can be exercised by the High Court."

24. Vital circumstances/factors that disfavor the petitioners and constitute *prima facie* allegations, making out commission of cognizable offences are firstly, the *de facto* complainant has filed copies of Passport and Visa to show that himself and his wife were not available in India when their statements purported to have been recorded and signed by them before the revenue authorities; second, and when an application is made under Right to Information Act, 2005, the concerned authority replied that they were not available. Thus, these two factors sufficient even at this stage to hold that there are *prima facie* allegations to connect the petitioners in the commission of cognizable offences alleged against them. It is no doubt true that no affidavit is filed along with the complaint but the petitioners have not chosen to file the order passed by the learned Magistrate referring the complaint under Section 156 (3) of the Code. Certainly, it is not a case where continuation of investigation into crime would amount to abuse of process of law.

25. Hence, the Criminal Petition is dismissed. Consequently, since the very Criminal Petition is dismissed, Criminal Petition M.P.No.17689 of 2016 stands dismissed and Criminal Petition M.P.No.19274 of 2016 stands closed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Date:05.06.2017.
Pv/gbs