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

CRIMINAL PETITION No.7636 of 2009 &
WRIT PETITION No.2308 of 2010

COMMON ORDER:

The 2nd writ petitioner by name M.Seetharamaiah is the defacto complainant in C.C.No.58 of 2009 pending on the file of Additional Judicial Magistrate of First Class, Gudivada and the 1st writ petitioner by name M.V. Raghavamma is no other than his wife's sister. There are 2 accused by name P. Seshagiri Rao & P. Raja Shekar (father and son, of whom A.1-father died on 11.02.2012 and the case against him is abated) in the said C.C. which is outcome of crime No.72 of 2008 of Nandivada Police Station, Krishna District, for the offences punishable under Sections 468 & 471 r/w 34 IPC. It is based on the report of the defacto complainant supra dated 26.11.2008, the above crime registered. The report which is necessary and relevant for the purpose of deciding the lis is reproduced below:

> "I am retired as Sub-Inspector of Police residing at Palakol, West Godavari District. My wife (late) Meruvu Venkata Bharatamma and her sister Meruvu Veera Raghavamma W/o Uma Maheswara Rao owned an extent of Ac..2-26 (Ac.1-13 + 1-13) in R.S.No.116/02 situated in Aripirale Village of Nandiwada Mandal, Krishna District, within the jurisdiction of Gudivada Sub Registrar Office. My wife and her sister paying taxes to revenue department. The MRO, Nandiwada, issued pattadar passbooks in favour of my wife and her sister.
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> Recently I come to know that one Polasi Seshagiri Rao S/o Subbaiah and his son Polasi Raja Shekar resident of Indiranagar Hanuman Junction, Bapulapadu Mandal, Krishna District, with a fraudulent intention, in order to cause wrongful loss to my family with the active connivance of K.R.Sastry document writer, Ghandinagar, Vijayawada – 03, executed of false sale deed in respect of above

mentioned Ac.2-26 in favour of Yenugula Anupama Devi W/o (late) Dr. Murali Krishna of Hyderabad and registered the same at Sub Registrar Office, Gudiwada on 23.01.2008 as document No.250/2008.

To our surprise Sub Registrar Gudiwada did not verify the title deed of the said property and colluded the document writer and seller and registered the same. Thereby violating the provisions of the Registration Act. Therefore I request you kindly to take action against the culprits."

2. The police final report on 21.01.2009 by showing 7 witnesses in the final report viz., the defacto complainant, his co-brother (husband of the 1st writ petitioner) as Lws.1 & 2, two neighbours of the land viz., M.Vasantha Rao and G.Francis as Lws.3 & 4 and the 1st writ petitioner who got a claim over the property of the title in dispute between the accused and the defacto complainant's family members supra as LW.5 and LW.6-Tahsildar, Nandiwada Mandal and LW.7-Sub Inspector of Police, who registered the crime, investigated and filed the final report. There are 9 documents referred viz., the FIR supra, Section 161 Cr.P.C. statements of Lws.1 to 6 supra, the certified copies of cist receipt, pattadar passbook and registered documents and copy of 10(1) Adangal, Bank of Baroda loan statement and Photostat copies of the pattadar passbook submitted to the loan and Photostat copies of the cist receipt and the list of witnesses referred supra as part of the charge sheet. The learned Magistrate has taken cognizance therefrom by order dated 06.02.2009 against the accused Nos.1 & 2 for the offences punishable under Sections 468 & 471 r/w 34 IPC. The gist of the police final report speaks that the wife of the defacto complainant-Seetharamaiah by name Meruvu Venkata

Bharatamma and her sister Meruvu Veera Raghavamma W/o Uma Maheswara Rao own an extent of Ac.2-26 (Ac.1-13 + 1-13) in R.S.No.116/02 situated in Aripirala Village of Nandiwada Mandal, Krishna District, within their possession and enjoyment for past 20 years and the MRO issued pattadar revenue title deeds in their names and they are paying taxes to the Government. A.1 & A.2 with fraudulent intention to cause wrongful loss to them by forgery of cist receipt showing as genuine, at Sub Registrar Office, Gudiwada, got registered a sale deed in respect of said Ac.2-26 cents in favour of Y.Anupama Devi W/o. Late Dr. Murali Krishna of Hyderabad on 23.01.2008 as document No.250/2008. The defacto complainant a retired Sub-Inspector of Police resident of Palakollu came to know about this sale transaction only 11 months later in November, 2008 through Nandivada Taluk Office and he presented a report to the SHO, Nandivada Police Station, from which the crime is registered and during investigation, the SHO verified the records of said land with Taluk Office by examining the Tahsildar as LW.6 and the neighbours to the land as Lws.3 & 4 and the defacto complainant and his wife's sister and her husband respectively also as Lws.1, 2 & 5 and for A.2 obtained anticipatory bail, A.1 was arrested and submitted to judicial custody and filed the final report saying the accusation for the offences referred in the registration of the crime are sustainable as they with fraudulent intention to cause wrongful loss to the defacto complainant and his family members by forgery of cist receipt showing as genuine at Sub Registrar Office registered the sale deed in favour of Y.Anupama Devi.

3. The statements during investigation of the defacto complainant besides the facts mentioned in the report no doubt shows further about earlier civil lis covered by O.S.No.185 of 1997 on the file of Principal Junior Civil Judge, Gudivada, filed by the 1st accused S/o Subbaiah by relying upon ryotwari passbook obtained and by payment of cist receipt against the mother in law of the defacto complainant and the trial Court delivered judgment on 20.07.2004 in favour of the defendant (in fact it is only a dismissal of the suit and there is no positive relief in favour of the defendant therein, who is claimed as mother in law of the defacto complainant among others if any, from perusal of the judgment). He stated further that he and his co-brother-LW.2 went to Nandivada Taluk Office on 21.01.2008 and came to know a sale executed by the said unsuccessful plaintiff A.1-Seshagiri Rao and his son Raja Shekar-A.2 in favour of Y.Anupama Devi and document writer, but for the said Ac.2-26 cents of R.S.No.116/02 vide registered document No.250/2008. On 18.09.2008 in Bank of Baroda for agricultural purpose loan of Rs.11,000/- taken by him and also by his wife's sister, however the accused persons cheated them in creating tax receipts passbook to cause loss to them for the property belongs to them and wrongfully alienated by sale deed supra in favour of Y.Anupama Devi. It is also referred about the appeal filed in A.S.No.19 of 2004 against the said dismissal judgment, before Senior Civil Judge, Gudiwada, was also ended in dismissal and they collected the records and given to the police. LW.2 his co-brother also stated in same line. Tahsildar-LW.6 stated that the Sub-Inspector of Police of crime No.72/2008 issued a request regarding the ownership of Ac.2-26 cents of

R.S.No.116/02 in Aripirala Village of Nandiwada Mandal, Krishna District, and it shows the names of Meruvu Venkata Bharatamma W/o Seetharamaiah and her sister Meruvu Veera Raghavamma W/o Uma Maheswara Rao, who obtained pattadar passbooks and title deeds for each Ac.1-13 cents and 10(1) Adangal is issued to the Sub-Inspector and originals of tax receipts of 1996 asked would be traced to give some time required and these two persons are in possession from the above. Lws.3 & 4- M.Vasantha Rao and G.Francis of Aripirala Village stated that the land belongs to wife and wife's sister of the defacto complainant who also obtained pattadar passbooks and revenue title deeds and the same was sold by Seshagiri Rao and his son Raja Shekar to Anupama Devi which came to know and it is cultivating by Seetharamaiah and Uma Maheswara Rao, Lws.1 & 2.

4. In the factual background, the quash petition filed by the accused persons, in seeking to quash the police final report that was taken cognizance by the learned Magistrate, is with the contentions that the land belong to A.1 and A.2 since his forefathers time and A.1 is in possession and enjoyment and Government also issued pattadar passbooks, however the defacto complainant influenced in obtaining pattadar passbooks subsequently in 1997 for the land and also they cause entered in pahanies the name of his wife and another wife and her sister and started obstructing the 1st petitioner/accused from cultivating the land even reported to SHO, Nandivada, police not chosen to take action, he unsuccessfully filed the suit for injunction against the defacto complainant and others. He is claiming as un-educated and innocent and the defacto complainant is taking undue

advantage of the same by influencing financially using official powers in falsely obtaining pattadar passbooks and title deed etc., and trying to obstruct the 1st petitioner/A.1 and in fact later on 23.01.2008 A.1 & A.2 sold the property to Y.Anupama Devi by registered sale deed No.250/2008 and it is a false complaint filed long subsequent to it knowingly by the defacto complainant and even the offences for which the crime registered under Sections 468 & 471 IPC have no application either from the FIR or from the police final report for the learned Magistrate to take cognizance and thereby sought for quashing.

5. It is also the further contention that there are civil disputes and it is pre-dominantly the dispute of civil in nature and the crime could not have been registered and final report could not have been accepted by the learned Magistrate in taking cognizance of the civil dispute merely because criminal flavour is added.

6. It is the contention of the learned counsel for the defacto complainant contra to the above quash petition averments and oral submissions on behalf of the learned counsel for the petitioners represented by learned senior counsel on the contrary that there is nothing to quash the proceedings and the quash petition is liable to be dismissed against the 2nd petitioner/A.2 and for the 1st petitioner/A.1 died is abated.

7. In this background coming to the writ petition filed by the defacto complainant and his wife’s sister respectively by showing as A.1 and A.2 as respondent Nos.4 & 5 (A.1 as respondent No.4 since died) and as respondent No.6-said Y.Anupama Devi vendee under the registered sale deed dated 23.01.2008 vide, document

No.250/2008 from A.1 and A.2 supra for no legal representatives need be brought on record in the writ petition as son of respondent No.4 is respondent No.5 and vendee of the property on record as respondent No.6 and R.7 is no other than the document writer one K.R. Sastry to the writ petition. The prayer in the writ petition is though very winding and complicated, ultimately in seeking for re-investigation of the whole offence against respondent Nos.4 to 7. The supporting affidavit in the writ petition only covers the above facts and nothing new but for saying in civil suit OS.No.185 of 1997 in the cross examination of plaintiff-Seshagiri Rao, there was an admission of no documentary evidence to show that he is personally cultivating and the suit and appeal ended in dismissal and the 4th respondent since died having lost in the civil lis after the death of defacto complainant's wife by name M.V.Bharatamma in 2007 filed P.L.C.No.63 of 2007 before the Legal Services Authority, Krishna District and it was disposed of directing to issue Adangal and collect tax subject Civil Court direction by directing MRO and the 6th respondent-Anupama Devi being advocate and relative to respondent No.4-Seshagiri Rao well acquainted should not have purchased for having no title and thereby she is also privy so also the document writer and anything not showing them as co-accused in the crime by the police is unsustainable and thereby it requires re-investigation. It is also averred that 6th respondent Anupama Devi was 3rd defendant in OS.No.78 of 2009 filed by the writ petitioners and she got knowledge of the lis. (undisputedly the sale is on 23.01.2008) and the civil suit OS.No.78 of 2009 and the question of summoning arises only after numbering of the suit and therefrom it is difficult to say much less to attribute any knowledge to her as it is subsequent to her purchase only she was made as a party to the suit). It is averred further that WP.No.27529 of 2009 filed by the 6th respondent to the writ petition by name Anupama Devi for cancellation of the pattadar passbooks issued in favour of the writ petitioners herein and it was dismissed by directing RDO to consider and dispose of appeal filed by her and the 6th respondent Anupama Devi filed another WP.No.694 of 2010, there the petitioners herein filed stay vacate petition in WVMP.No.303 of 2010 and the same are pending and as police did not properly investigate and it requires re-investigation of the crime No.72 of 2008 covered by CC.No.58 of 2009 is seeking the relief mentioned in the writ petition.

8. The counter filed by the 3rd respondent, the Sub-Inspector of Police, Nandivada, is that the allegations in respect of investigation not properly and completely done in relation to the alleged offence committed by respondent Nos.4 & 5 and saying respondent Nos.6 & 7 not arrayed as accused despite material are untenable and the alleged collusion with accused is also baseless. The IO examined the writ petitioners and other witnesses and recorded the detailed statements by conducting full fledged investigation and also examined the MRO and thereby for no more material that could be brought by defacto complainant or other witnesses after completion of investigation filed the charge sheet and the writ petition is devoid of merits as investigation is conducted highly impartial and fair.

9. The contentions of the other respondents to the writ petition supra are same of the quash petition averments

particularly of A.2 since A.1 died (R.4 & R.5). So far as the quash petition concerned, the defacto complainant M.Seetharamaiah filed his counter stating there are no grounds to quash the cognizance order of the learned Magistrate from the police final report as there is conspiracy and they fraudulently created the documents with an object to grab the property belongs to the defacto complainant's wife and her sister by cheating revenue authorities and they are liable to face trial and also referred about civil litigation in O.S.No.185 of 1997 and A.S.No.19 of 2004 against it where the 1st accused since died went unsuccessful in the lis and sought for dismissal of the quash petition.

10. Even from the writ petition averments it could not be stated what more facts that could be brought on record, as the statement of the defacto complainant as LW.1 contains the particulars of A.1 went unsuccessful in suit O.S.No.185 of 1997 and A.S.No.19 of 2004 and there was also PLC before the Lok Adalat Committee that were referred. What all the grievance is including in asking for re-investigation, not showing the document writer as co-accused so also the vendee Anupama Devi as co-accused.

11. The Apex Court in **Mohd. Ibrahim Vs. State of Bihar**[1] held that the vendee stands as a victim and cannot be called as accused of any cheating or forgery. In fact there is nothing to say the vendee forged any document, but for she purchased the property at best to say what she purchased is not by passing any title, not with any possession or right by vendors of the sale deed

[1] AIR 2009 SC 2380

i.e., A.1 and A.2, that can be the contention and from that the vendee cannot be arrayed as accused. So far as the scribe of the document concerned, he is nothing to do with the transaction between the parties, but for from any transaction entered sale between the vendor and vendee from the material to scribe the document and even for that matter an attestor also cannot be made liable for nothing to attribute any knowledge of the contents of the document or any privy behind the transactions and the three Judge Bench of the Apex Court in **H.V. Venkata Sastry Vs. Abdul Jabbar**[2] held clearly in this regard.

12. Having regard to the above, though the Constitutional Court can order re-investigation including on seeking from a writ petition, provided there is a factual foundation for re-investigation, also from the expression of the Apex Court in **Vinay Tyagi vs Irshad Ali @ Deepak & Others**[3]. Here on the facts there is nothing to order re-investigation. Once the statement of the defacto complainant contains of the sale transaction and the revenue records pertaining to the pattadar passbooks and title deeds obtained and the decree and judgment of the suit those even subsequently after post cognizance stage if necessary with a petition can be filed by prosecution or defacto complainant etc., by explaining earlier non-filing if any. Once such is the case, there is nothing to order for re-investigation or further investigation in the case on hand from the cognizance already taken by the learned Magistrate for nothing to say even from the writ petition averments of any of the averments from the statements of the defacto

[2] AIR 1969 SC 1147
[3] 2013 (5) SCC 762

complainant and other witnesses are in distorted version without any say by them. Thus, the writ petition deserves dismissal for no grounds to consider any re-investigation in particular and apart from any need of further investigation not shown.

13. Now coming back to the quash petition averments which are detailed supra which no way again requires reproduction from FIR registered from the report of the defacto complainant contents reproduced supra, what all says is A.1 since died on 11.02.2012 and his son with fraudulent intention to cause wrongful loss to the defacto complainant's family with connivance of the document writer K.R. Sastry executed a false sale deed in respect of Ac.2-26 cents of the land supra of S.No.116/02 of Aripirala Village in favour of Y.Anupama Devi of Hyderabad vide registered document No.250/2008 dated 23.01.2008 and Sub Registrar without verification of title to the property registered the document. There is nothing to say how the Sub Registrar can be imputed as colluded from the registration. If there is no title no one can have a better title than what he or they have is the settled position of law. Even from this report there is nothing attributed against the vendee. If at all any wrongful loss suffered by the sale transaction is by the vendee to say the aggrieved against the vendor and not by a third party. Even to say the sale executed by A.1 by joining his son A.2 without title despite he went unsuccessful in the civil lis in O.S.No.185 of 1997 and again in A.S.No.19 of 2004 therefrom also the vendee could claim any loss suffered from the sale transaction being the victim. It is not a case of any forgery for the purpose of cheating or using as genuine any forged document by A.1 by joining his son A.2 in their selling the property to Anupama Devi

and from what is his title as on that date if he has no title she could get no title, if he has title she could get title and there is no any forgery much less for the purpose of cheating or using as genuine any forged document in execution of sale deed and even it is not a case that could be made out from the report or investigation of any recitals showing the tax receipt from the sale deed recitals much less to say even from the police final report of a tax receipt is forged. The question of forging the tax receipt by a private person does not arise, that too it is not even the case that the tax receipt was not passed by the revenue authorities. Undisputedly now from the suit, including from the reading of the judgment as material with the writ petition by the defacto complainant of O.S.No.185 of 1997, the pattadar passbook obtained in favour of the plaintiff (A.1) way back on 08.03.1992 under Record of Rights Act was exhibited as Ex.A1 and the tax receipt dated 06.08.1996 for the fasli 1392 to 1405 or so filed as Ex.A2 those were marked. Even from what the defacto complainant pursuant to the judgment in O.S.No.185 of 1997 particularly from Paras 12 & 13 wanted to say in the course of hearing is that the trial Court observed that the suit of said A.1-Sheshagiri Rao plaintiff in order to prove his case including of his possession over plaint schedule property examined himself as PW.1 and exhibited Exs.A1 & A.2 and Ex.A1 is the alleged passbook in favour of the plaintiff for the plaint schedule that was marked subject to objection from the objection raised by the defendant for admitting the same and plaintiff did not prove and establish Ex.A1 as true and valid and issued by competent authority to have legal enforcement and it was alleged to have been issued on 08.03.1992 and however signed by Karanam of village and not with any official seal by the stamp of the revenue authorities and PW.1 in his evidence also admitted of no such seal of the revenue authorities thereon and did not place by plaintiff to establish that by 1982 Village Karanam is competent to issue rytwari pattadar passbook and collected particularly Ex.A1 is not proved and cannot be taken into consideration to appreciate the contention of plaintiff and so far as Ex.A2 land tax receipt dated 06.08.1996 it was for the periods from 1982 to 1985, issued on 06.08.1996 filed in Court on 12.06.1997 and survey number mentioned as 33 and no evidence placed to co-relate the same to the plaint schedule in S.No.116/02 much less to correspond the same to the plaint schedule property to tax receipt show possession thereby doubted the genuineness of it. Even therefrom what all held is plaintiff could not prove his title, defendants on the contrary therefrom evidence could prove their possession and title. Even the appellate Court at Para 14 in A.S.No.19 of 2004 observed plaintiff cannot rely on the weakness of the defendant's case, leave about DW.1 produced Exs.B1 to B6 of which are tax receipts and pattadar passbooks and as plaintiff could not prove his title and possession over the property and with reference to the documents as held by the trial Court, there is nothing but for confirmation of the trial Court's judgment. Even therefrom the execution of the sale deed if at all the victim is the vendee and the complainant cannot say that there is any offence of forgery for the purpose of cheating or using as genuine any forged document by virtue of the sale. It is not a case that there was any finding by the trial Court or the appellate Court much less from any request by the defendants therein to prosecute the plaintiff invoking Section 195 r/w 340 Cr.P.C. for offences effecting administration of justice from relying of Ex.A1 passbook and Ex.A2 tax receipt by saying those are forged ones. What all observed in the civil suit is that those could not be proved from the person issued is competent and so far as the passbooks and the tax receipts as relief to the suit property for survey No.116/02 not mentioned.

14. Thus the filing of the charge sheet and the taking of cognizance from the very report and sustaining of the prosecution is nothing but abuse of process for none of the 2 offences of Sections 468 & 471 that attract to the facts.

15. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the 2nd petitioner/A.2 since A.1 died and the writ petition is dismissed for there is nothing to re-investigate the case.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 25.10.2017
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