HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.29639 of 2015
&
WRIT PETITION No.31962 of 2015

COMMON ORDER:

Since these two writ petitions are filed by two different accused seeking quashing of the same FIR, they are disposed of by this Common order.

2) The petitioners herein are A-1 and A-2 in Crime No.264 of 2015 of Bommuru P.S., Rajahmundry urban, registered for the offences punishable under Sections 465, 468, 471, 474, 448, 511, 120-B read with 34 IPC. The averments in the affidavit are as under:

3) The 4th respondent, who is a Doctor by profession, lodged a report stating that he purchased 1069.22 sq. yards of land in Sy.No.332/2A2 of Pidimgoyya village from one K.J.Bastian of Madras rep. by its General Power of Attorney Holder and its authorized signatory being Sri Malli Tirpa Reddy under a registered sale deed dat:24.04.2004 bearing Doc.No.2751/2004 of District Registrar, Rajahmundry. A few months later he again purchased 444.44 sq. yards from the same vendor under a document bearing No.6445/2004. It is said that since the date of purchase, the informant herein is in peaceful possession of the same. He claims to have got his name mutated in the revenue records. It is further alleged that Village

Revenue Officer issued a certificate showing his possession and later the Gram Panchayat issued house number bearing Dr.No.14-26/2. On 27.10.2010, the 4th respondent leased out the said land to M/s.Jayalakshmi Steels, Rajahmundry rep. by its Managing Partner Koripella Geeta Subhashini under a registered lease agreement. While things stood thus, the informant came to know that one M.Suresh Kumar (A-1) got registered the said land on 03.11.2014 from one P.Veera Venkata Sesharatnam. The said document was registered vide Doc.No.171/2015 dt:25.02.2015. The said document is said to have been forged and created with an intention to cause loss to the informant. On 05.08.2015, the 4th respondent got the same published in local news papers showing his possession and title over the said property. Recently, A-1 along with his associates approached the tenant of the 4th respondent and demanded him to vacate the property. A-1 along with his associates are alleged to have threatened the tenants with dire consequences. It is said that the attestors, the scribe of the document and A-2 conspired together and created a forged document with a view to cheat the informant. Basing on these allegations, the above case came to be registered.

4) Challenging the registration of the above crime, two writ petitions came to be filed. W.P.No.31962/2015 is filed by A-1, while W.P.No.29639/2015 came to be filed by A-2.

5) The learned counsel for the petitioner/A-1 would submit that even accepting the allegations in the report to be true no offence is made out. According to him, when the informant himself filed a suit for declaration, he cannot now turn back and say that he is the owner of the property and that the petitioners have forged and fabricated the document. It is urged that the dispute between the parties is only with regard to identification of the same and a such the matter is purely civil in nature.

6) Insofar as the A-2 is concerned, the learned counsel for the petitioner/A-2 would submit that land to an extent of Ac.2.87 cents in R.S.No.332/2 was assigned to his father by way of 'D' form patta in the year 1944 and ever since then he is in possession and enjoyment of the property. It is further urged that out of the total extent of Ac.2.87 cents, land to an extent of Ac.0.46 cents was gifted to A-2 towards 'pasupu kumkuma' by her mother and brothers vide gift deed No.2118/1971 dt:08.07.1971. The remaining extent of the land was acquired by the Government and given to weaker section people. Since the petitioner could not take care of the property, she is alleged to have sold the property to A-1 vide regd. sale deed 03.11.2014. It is further urged that originally the property was purchased in a court auction and since the allegations made in the report even accepting to be true do not make out a case, seeks quashing of the FIR.

7) By an order dated 11.09.2015 and 01.10.2015 while admitting the writ petition filed by A-2 and A-1 granted stay of arrest.

8) Counters came to be filed by the unofficial respondents and also by the 3rd respondent disputing the averments made in the affidavit filed in support of the writ petition. It is averred in the counter that the writ petitioner was never in possession of the property and the same was purchased by the informant under a registered sale deed and for a valuable sale consideration. It is said that both the vendor and vendee along with the registering authorities conspired together and played fraud. The averments in the counter further show that the names of the attester and scribe in the said document are not legible and have no details about them.

9) The averments in the counter filed by 4th respondent show that A1 and A-2 got scribed the sale deed dt:03.11.2014, presented the same for registration on 06.11.2014 and thereafter got it registered. Relying upon various circumstances, it is alleged that the document prima facie appears to be a forged one.

10) A perusal of the record would disclose that one Achanta Suryanaayana Murthy was granted D-form patta in 1952 under L.No.2/1952 and subsequently, the said Achanta Suryanarayana Murthy availed a loan of Rs.500/- from the Government. In view of

that, Form-VI was given by the then Tahasildar. After that, he failed to repay the said loan and on that the Government sold the property and issued publication on 18.04.1961 for auction. During the auction, one Katari Sanyasi Rao was declared as a highest bidder for Rs.5,200/-, for which the Sub-Collector, Rajahmundry issued sale certificate and he was put in possession. It is further sated that the said Sanyasi Rao, sold the same to Vaaka Adinarayana under a regd. Sale deed dated 20.08.1963. Later the said Adinarayana sold the same to Jagadeesh Vasamjee for a consideration of Rs.8,500/- under a registered sale deed. It is stated that the initially the total extent of land was Ac.2.71 cents in R.S.No.332/2A. When the property was in possession of Jagadeesh Vasamjee, major extent of the land i.e., Ac.1.72 cents was acquired by the Government and the remaining extent of Ac.0.99 cents was only available in his possession. Subsequently, the said Jagadeesh sold Ac.0.99 cents of property to Kovvuri Veerreddy for a sale consideration. The said Veerreddy got mortgaged the said land with Bank of Baroda, Rajahmundry. While things stood thus, M/s. K.J.Bastian of Madras through their GPA holder M.Tirpareddy filed the suit and brought the said property for sale in E.P.No.31 of 1999 in O.S.No.34 of 1998. In the said auction, M.Tirapa Reddy on behalf of M/s. K.UJ.Bastian purchased the property for a sum of Rs.26,15,000/- which was confirmed by the Court with a condition to clear the prior mortgage debt due to Bank of

Baroda. Finally by virtue of two sale deeds, the informant purchased 1069.22 sq. Yards and 454.44 sq. yards from Mallidi Tirapa Reddy. In the entire history of the case, nobody conferred any right on the petitioner over the said land. Without having any valid right, the petitioner executed a sale deed in favour of A-1. It is also stated that the sale deed dated 03.11.2014 discloses that the petitioner obtained title through a registered settlement deed dated 08.07.1971 and it further discloses that there were no earlier mortgages, sales and sale agreements over the property. The said document does not disclose that the petitioner has been paying the property taxes between 08.07.1971 and 03.11.2014.Thus, the petitioners herein i.e., A-1 and A-2 intentionally, brought into existence the registered sale deeds so as to defeat the rights of the informant.

11) In short, the material placed before this court would show that Kovuri Veera Reddy mortgaged land to an extent of Ac.0.99 cents with Bank of Baroda, Rajahmundry branch. M/s. K.J.Bastian of Madras through their G.P.A. holder and Tirpa Reddy filed O.S.34/1998 and got the said property for sale in E.P.No.31/99. On 26.11.2001 the Court conducted the sale and Tirpa Reddy purchased the property for a sum of Rs.26,15,000/-, which was confirmed with a condition to clear mortgage debt due to Bank of Baroda. The sale was confirmed by the bank and the sale certificate dated:26.11.2001 was issued. Later on, by virtue of the two sale deeds the informant

purchased the property. Therefore, prima facie the record and counter filed by the 3rd respondent show that the petitioner herein has no right over the said property. Though at first blush the entire matter appeared to be civil in nature but a close perusal of the same proved to be otherwise.

12) Section 482 Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court namely :

i) to give effect to an order under the Code;

ii) to prevent the abuse of process of court; and

iii) to otherwise secure the ends of justice.

These inherent powers of the High Court are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of the court. The exercise of inherent power would normally depend on facts and circumstances of each case, but as held in **Susheel Suri's** case[1] the common thread which runs through all the decisions on the subject is that the court would be justified in involving it's jurisdiction where the allegations made in the complaint or charge-sheet as the case may be, taken at their face value and accepted in their entirety do not constitute the offences alleged. The plenitude of the power under section 482 Cr.P.C. by itself, makes

[1] **2011(5) SCC 708**

it obligatory for the High Court to exercise the same with utmost care and caution. The width and nature of power itself demands that it's exercise is sparing and only in cases where the High Court, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of process of law. The said exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in abuse of process of the law. The High Court has to consider the facts and circumstances of each case to determine whether it is a fit case to invoke the inherent power. (**Shiji alias Pappu and others v. Radhika and another**[2]).

13) As seen from the averments in the first information report and also the counter filed by the official respondent, the allegations *prima facie* show forgery and creation of document by petitioners in both the writ petitions. That being the position, the Apex Court in **Kamala Devi Agarwal v. State of West Bengal**[3] observed that allegation of forgery cannot be a ground to say that the matter is civil in nature. The averments in the counter show that sofar 8 witnesses were examined and copies of sale deeds, lease agreements, tax receipts, adangal reports etc., were seized. A letter was also issued to Sub Registrar to furnish the attested copies of

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[2] (2011)10 SCC 705
[3] AIR 2001 SC 3846

documents available in his office relating to the alleged registration of schedule property. It is said that the information is awaited from the office of Sub Registrar, Annavaram.

14) Since the case is still at the stage of investigation and taking into consideration the nature of allegations made, more particularly the act of forgery, this court is of the view that the investigation cannot be stalled. Hence, I see no merits in these Writ Petitions and the same are liable to be dismissed. However, since the offences alleged are punishable with 7 years and less, the authorities shall scrupulously follow the conditions stipulated in the judgment of the Apex court in ***Arnesh Kumar v. State of Bihar and another***[4].

No costs. Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:27.04.2017
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[4] 2014 (2) ALT (Crl.) 457 SC