

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.5152 and 6298 of 2013

COMMON ORDER:

The criminal petitions are filed seeking for quash of the proceedings in Cr.No.46 of 2013 on the file of the Narsapur Town Police Station, West Godavari District against petitioners, who are A1 and A3 to A5 respectively, registered for the offence under Sections 120-B, 420, 467, 468, 471 read with Section 34 Indian Penal Code and Section 81 of the Registration Act.

2. Heard counsel for the petitioners; learned Public Prosecutor, who takes notice for first respondent and counsel for the second respondent.

3. The complainant is, allegedly, sister-in-law of A3 to A5 and A1 is a distant relative of the complainant. The complaint is that all the accused executed two sale deeds dated 30.05.2011 and 04.07.2011 in respect of the joint family properties, in which the husband of the complainant has a share. The grievance of the complainant is that in the said documents, the complainant was shown as 'Died Intestate' and that the same would amount to the alleged offences. There is no denial of the fact that the property covered by the sale deeds is joint family property. The recital to the effect that Jagannatha Rao and his wife are no more is nevertheless made.

4. The counsel for the petitioners contends that it might be an inadvertent recital due to ill-drafting and that the same is not intentional. He also contends that out of 560 sq. yards in D.No.11-4-

110 only 450 sq. yards is covered by the sale deeds and approximately the share of Jagannatha Rao is left out, hence, there cannot be any grievance to the complainant.

5. On the other hand, the counsel for the second respondent contends that there is shortfall in the share of Jagannatha Rao and the intention of the parties in leaving part of the said party is not known and that there is no partition of the said property.

6. Counsel for the petitioners relies on a decision of the Supreme Court in MOHD. IBRAHIM v. STATE OF BIHAR¹, which is rendered almost in the same factual situation.

7. As regards offences under Sections 467, 468 and 471 of the IPC are concerned, this Court is also of the opinion that they are not attracted. The allegations do not constitute the said offences. The allegation is only that false recital is made in the sale deed. There is no allegation that the document is a forged document. The Supreme Court also in MOHD. IBRAHIM's case (1 supra) came to deal with the similar facts and it was held that a false recital in a document does not amount to forgery. Hence, on the basis of the said decision, the complaint is liable to be quashed so far as the offences under Sections 467, 468 and 471 of IPC read with 34 IPC are concerned.

8. But as regards the offence under Section 420 IPC is concerned, the definition of Section 418 IPC, as under, would take into its purview the alleged offences against the petitioners.

¹ (2009) 8 SCC 751

“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.- Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

9. It may not constitute the offence under Section 420 IPC, as Section 420 IPC requires a fraudulent or dishonest inducement of the person and there should be delivery of property by the person so deceived or there should be an intentional inducement to do or omit to do anything which he would not do or omit if he was not deceived. The allegation in the complaint does not make out any ingredients of Section 420 IPC. But from the recital in the sale deed, if the intention to deprive the complainant of her property can be culled out, it would not be advisable to quash the proceedings against the petitioners for the offence under Section 420 IPC is concerned and it would be better to leave the scope of altering the provision of law by the police, after due investigation and while filing charge sheet.

Hence, the criminal petitions are partly allowed and the proceedings in Cr.No.46 of 2013 on the file of the Narsapur Town Police Station, West Godavari District for offences under Sections 467, 468 and 471 of IPC read with 34 IPC against the petitioners are hereby quashed. The police are, however, directed to follow the guidelines in of ARNESH KUMAR v. STATE OF BIHAR² before effecting the arrest

² (2014) 8 SCC 273

of the petitioners. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 6, 2017
DSK

T. RAJANI, J

