THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.879 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short), is filed by the petitioner-accused requesting to quash the proceedings against him in C.C.No.1584 of 2009 on the file of the Court of the learned IX Metropolitan Magistrate at Kukatpally, Cyberabad.

2. I have heard the submissions of *Sri P. Jagadish Chandra Prasad,* learned counsel for the petitioner-accused; of *Sri L. Sridhar,* learned counsel for the 3rd respondent; and, of the learned Public Prosecutor (AP) representing the 1st respondent-State. The 2nd respondent-complainant died pending the criminal petition and the 3rd respondent, being the legal heir of the deceased 2nd respondent, is impleaded as per order, dated 20.07.2015 in Cr.P.MP.No.6514 of 2015.

3. I have perused the material record.

4. At the outset, it is to be noted that the 2nd respondent- complainant (since died) filed a private complaint under Sections 199 & 200 of the Code of Criminal Procedure, 1973, read with Sections 403, 406, 420 & 423 of IPC. The same was forwarded to the Station House Officer, Balanagar P.S., for registering the case and conducting investigation. Pursuant thereto, case in Crime No.219 of 2009 for the offences punishable under Sections 403, 406, 420 & 423 IPC was registered. After due investigation charge sheet was filed. And, C.C.No.1584 of 2009 was taken on file by the learned IX Metropolitan Magistrate at Kukatpally, Cybderabad. The

accused having entered appearance filed this petition to quash the proceedings in the above Calendar Case against him. The legal representative of the deceased complainant is resisting this petition.

5. The case of the petitioner-accused in support of his request to quash the proceedings in the Calendar Case against him, in brief, is this:

The 2nd respondent filed a similar complaint with similar set of facts for similar offences on the file of the Additional Judicial First Class Magistrate, Hyderabad, West and South, Ranga Reddy District at L.B. Nagar, in the year 2004; the same was referred to the police station concerned; a case in crime no.81 of 2005 was registered; the same was subsequently closed due to lack of evidence. Suppressing the said facts, the present complaint is filed, before Balanagar Police Station, on the same set of facts & allegations and by invoking the same provisions of law. The investigating officer has not conducted proper enquiry regarding the earlier complaint and the crime registered earlier, which was closed for lack of evidence. The second complaint is not maintainable. And, the calendar case taken on file on the basis of the second complaint cannot be entertained under facts and in law. Therefore, proceeding with the trial of the said calendar case is clear abuse of process of law. Further, from the allegations in the complaint it is also clear that the dispute is a civil dispute and that the complainant is trying to convert it into criminal nature only to harass the petitioner-accused. The calendar case is liable to be quashed.

6. Per contra, the pleaded case of the deceased complainant, in brief, is as follows:

The petitioner-accused is her younger son. Her elder son, Satyanarayana Dandgey settled in London, UK, in the early 1970's. She is the absolute owner of the property bearing No.8-261/1 (Old No.7-109/06), Ward No.7, plot No.31, in survey nos.20 & 21, admeasuring 266 Square yards situate at Gautam Nagar, Ferozguda village, Balanagar Mandal, R.R. District. The same was acquired under a registered sale deed, dated 25.06.1984, with the money sent by her elder son. She obtained permission from the then Gram panchayat and constructed a house consisting of 8 rooms with RCC roof and 2 asbestos sheet rooms and a garage. In the said property, no one else is having any right or interest including the petitioner herein. She and her husband are residing at Muslapur of Medak District. As such, she asked the petitioner/accused, who is her younger son, to look after the above said property and reside therein. As her husband was suffering from ill health, in the year 1999, she along with her husband shifted their residence from Muslapur to the suit schedule property. At that juncture, the petitioner resisted the complainant and her husband from entering into the premises. On interference of neighbours and well wishers, the petitioner/accused gave them a room in the above mentioned property, to reside. Several portions were let out to different tenants. The petitioner/accused has been collecting rents and enjoying the rents from the property. Having seen the attitude and nature of the petitioner/accused and to avoid disputes in future, she executed a registered Will, dated 27.11.2000, bequeathing the suit schedule property to her husband, elder son and the petitioner/accused herein in three equal parts. In the year 2001, the petitioner/accused approached her and made a proposal for construction of residential portions in first floor by obtaining housing loan and by saying that the loan can be repaid from out of the rental income. Believing the version of the petitioner/accused, she signed various documents. In the said process, the petitioner/accused took her to the sub registrar's office, Kukatpally, and got executed a gift deed in his favour by playing fraud on her. She is an old and illiterate lady. She executed the alleged gift deed believing the versions of the petitioner that the documents are required for obtaining loan in her name for constructing the first floor. After sanction of loan, the first floor was constructed; the petitioner shifted his residence to the first floor; and, the remaining portions were leased out to tenants. She was under the impression that the petitioner is collecting rents and remitting the same towards housing loan account. While so, in the month of August, 2002, her elder son came to Hyderabad for a two month visit. She discussed with her elder son and decided to allot 50% share in the property to her elder son. Accordingly she executed a deed of cancellation vide document, dated 14.08.2002 and cancelled the earlier Will deed; on the same day she executed a registered gift deed, vide document no.984 of 2003, in favour of her elder son and settled entire ground floor along with undivided share in land of 133 square yards. Initially the SRO of Kukatpally kept the document pending for want of property tax receipt. When the complainant and her elder son approached the tax Collector concerned to pay the tax, they came to know that the name of the complainant was removed from the assessment records and that the name of the petitioner/accused was substituted in the place of her name vide proceedings No.A3/1418/2001 issued by the Commissioner, Kukatpally Municipality. Immediately they rushed to the Municipal office, Kukatpally; and, on their further enquiries they came to know about the alleged gift settlement deed, dated 06.02.2001, basing on which the Commissioner, Kukatpally Municipality, passed the mutation order. She had no intention to execute the gift deed in favour of the petitioner-accused at any point of time. The same was obtained by the petitioner by playing fraud and keeping her under the impression that her signatures on certain papers were required for obtaining housing loan. When she and her husband questioned the petitioner/accused about the alleged gift deed, the petitioner-accused and his wife had thrown away her and her husband and their belongings from the premises. She also filed O.S.No.984 of 2002 for cancellation of alleged gift deed said to have been executed by her in favour of the accused-petitioner herein. The petitioner/accused cheated her and got executed a registered document by playing fraud on her. Therefore, the petitioner-accused is liable to be punished.

7. At the hearing, learned counsel for the petitioner-accused reiterated the grounds urged in the criminal petition, which are extracted supra while stating the case of the petitioner.

8. Learned Public Prosecutor would submit that the contents of the first information and the evidence collected would show that there is a *prima facie* case for prosecuting the petitioners/accused and that at this stage this Court need not examine either the merits of the matter or appreciate the evidence collected by the police and that there is no merit in the present petition of the petitioner/accused. He would further submit that the material record discloses not only a *prima facie* case but a strong case for proceeding against the petitioner/accused and that a plain consideration of the material gathered and available on record and the facts emerging therefrom, even when taken at their face value, disclose existence of all ingredients constituting the elements of offence alleged against the petitioner/accused and that at this stage, the prosecution is not required to prove the case beyond any shadow of doubt and that the prosecution would be required to do so only at the time of conclusion of the case after full-fledged trial and that the

prosecution succeeded in its primary duty and in showing a *prima facie* case and a strong case for proceeding against the accused.

9. In reply, the learned counsel for the petitioner would submit that the matter is purely of civil nature and that as per the settled law when the matter is essentially one involving a civil dispute no prosecution is permissible and that as the dispute is of civil nature, it should not be allowed to be the subject matter of criminal offences. He would reiterate that the averments in the complaint do not constitute any offences and that allowing the prosecution to go on is a futile exercise. Therefore, he prayed to quash the proceedings in the calendar case.

10. I have bestowed my attention and given earnest consideration to the facts and submissions. It is to be first noted that a private complaint filed against the petitioner-accused, for the offences punishable under Sections 403, 406, 420 & 423 of IPC, was referred to the police by the learned Magistrate and that thereafter the police filed a charge sheet after conducting investigation and the learned Magistrate has taken the Calendar Case on file against the accused. Having regard to the facts and submissions, it is to be now examined as to whether the criminal proceedings in the above CC against the accused are liable to be quashed on any of the grounds urged by the petitioner-accused.

10.1 Dealing first with the contention that this present Calendar Case is taken on file pursuant to a second complaint and that, therefore, the prosecution on the basis of the second complaint is barred, it is to be noted that there is no hard and fast rule or for that matter a statutory bar for filing a second complaint on the same facts. The law is well settled that in a case where the first complaint is dismissed without assigning any reasons or for lack of evidence, the second complaint is entertainable on the same facts when new facts and new evidence have been brought on record and when there are sufficient grounds for proceeding pursuant to the second complaint. In such matters the second complaint could be dismissed only after full consideration of the case. In the case on hand, the investigation officer after thorough investigation filed a charge sheet opining that there are sufficient grounds to proceed against the accused. Therefore, the learned Magistrate found good reasons and sufficient grounds for proceeding against the accused and, therefore, has taken the case on file. The said course adopted by the learned Magistrate in taking on file the Calendar Case finds support from the decision in Mahesh Chand v. B. Janardhan Reddy and another [AIR 2003 SC 702]. Accordingly, this Court finds that the first contention of the petitioner-accused needs no countenance.

10.2 Dealing next with the contention that the criminal proceedings are liable to be quashed on the ground that the dispute between the deceased mother and the petitioner-accused being prosecuted by the brother of the accused is purely of civil nature, it is to be noted that on examination of the facts of the present case it is manifest that the mother made serious allegations against the petitioner-accused, her own son, by *inter alia* stating that he got executed a gift deed fraudulently; and by cheating her. Further, the offences alleged are punishable under Sections 403, 406, 420 & 423 of IPC. Therefore, complaint cannot be quashed merely on the grounds that civil remedy is available (See: M/s.Medchi Chemicals and Pharma Pvt.Ltd., v. M/s.Biological E.Ltd., and others (AIR 2000 SC 1869); Rashida Kamalauddi Syed and another v. Shaikh Saheblal Mardan {(2007) 3 SCC 548} and Ganga Dhar Kalita v. The State of Assam and others (AIR 2015 SC 2304)]. In Arun Bhandari v. State of Uttar Pradesh and Ors. [(2013) 2 SCC 801], the Supreme Court has held that if the allegations in the First Information Report are not frivolous, *mala fide* or vexatious, it cannot be simply quashed for the reason that civil suit is also pending in the matter. Relevant paragraphs of the said case are reproduced below:

> The factual score as depicted is that the Appellant is a non-resident Indian (NRI) living in Germany and while looking for a property in Greater Noida, he came in contact with Respondent 2 and her husband, Raghuvendra Singh, who claimed to be the owner of the property in question and offered to sell the same. On 24-3-2008, as alleged, both the husband and wife agreed to sell the residential plot bearing No. 131, Block Cassia Fistula Estate, Sector Chi-4, Greater Noida, U.P. for a consideration of Rs. 2,43,97,880 and an agreement to that effect was executed by Respondent 3, both the husband and wife jointly received a sum of Rs. 1,05,00,000 from the Appellant towards part-payment of the sale consideration. It was further agreed that Respondents 2 and 3 would obtain permission from the Greater Noida Authority to transfer the property in his favour and execute the deed of transfer within 45 days from the grant of such permission.
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> As the factual antecedents would further reveal, the said agreement was executed on the basis of a registered agreement executed in favour of Respondent 3 by the original allottee, Smt. Vandana Bhardwaj to sell the said plot. After expiry of a month or so, the Appellant enquired from Respondent 3 about the progress of delivery of possession from the original allottee, but he received conflicting and contradictory replies which created doubt in his mind and impelled him to rush to Noida and find out the real facts from the Greater Noida Authority. On due enquiry, he came to know that there was a registered agreement in favour of the third Respondent by Smt. Vandana Bhardwaj; that a power of attorney had been executed by the original allottee in favour of Respondent 2, the wife of Respondent 3; that the original allottee, to avoid any kind of litigation, had also executed a will in favour of Respondent 3; and that Respondent 2 by virtue of the power of attorney, executed in her favour by the original allottee, had transferred the said property in favour of one Monika Goel who had got her name mutated in the record of the Greater Noida Authority. Coming to know about the aforesaid factual score, he demanded refund of the money from the Respondents, but a total indifferent attitude was exhibited, which compelled him to lodge an

> FIR at Police Station Kasna, which gave rise to Criminal Case No. 563 of 2009.

In the above stated backdrop of facts, the Supreme Court having referred to the ratios in the relevant decisions including the decisions in Mohammed Ibrahim and Ors. v. State of Bihar and Anr. [(2009) 8 SCC 751]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636] and Indian Oil Corp. v. NEPC India Ltd. [(2006) 6 SCC 736)] held as follows:

> "The entire conduct of the Respondent Nos. 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 Hridya Rajan Pd. Verma and Ors. (supra) 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 so after making the factual analysis in detail. In view of our aforesaid analysis we allow the appeal, set aside the order passed by the High Court and direct the Magistrate to proceed in accordance with law."

10.3 Dealing now with the contention that on the death of the deceased mother, who is the complainant, the other son, who is impleaded as a party, cannot prosecute the criminal proceedings against the present accused, it is to be noted that on the death of the mother, the other brother of the accused immediately sought permission to continue the prosecution and he was brought on record as 3rd respondent to enable him to prosecute the criminal proceedings. In that view of the matter, the case did not abate as it is always open for the son of the deceased complainant to continue the proceedings against the accused. This view of this Court also finds support from the decision in Rashida Kamaluddin Syed's case (supra).

11. It is well settled that quashing of the criminal proceedings or discharge of an accused is permissible only if the facts that emerge on

evaluation of the material and documents on record do not disclose a *prima facie* case and/or the existence of all the ingredients constituting the alleged offences, even when taken at their face value.

12. In this regard, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri LJ. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence

as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

13. Looking at the instant matter from the point of view of the facts and law, this Court finds that the uncontroverted allegations made in the complaint and the opinion that was expressed in the final report after

investigation do disclose *prima facie* the commission of certain cognizable offences and make out a case, *ex facie*, for proceeding against the accused/petitioner. Therefore, in the well considered view of this Court, none of the circumstances which are sufficient to quash the proceedings do exist in the present case. The law is well settled that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, that too in rarest of rare cases and the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint and the opinion expressed in the final report. In Kamaladevi Agarwal v. State of W.B. and Ors. [(2002) 1 SCC 555], this Court has observed as under:

> This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.

On the application of the above tests and on the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioner/accused to quash the proceedings against him in the calendar case does not merit consideration. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the petitioner/accused to raise before the trial Court all the defences, which the facts and law permit.

14. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

27.11.2017
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