

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.6719 of 2011

ORDER:

This criminal petition is filed by the petitioners/A-1 to A-5, under Section 482 of Cr.P.C., seeking to quash the proceedings in Crime No.31 of 2010, dated 07.03.2010, on the file of II Town Police Station, Kadapa.

2. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the 1st respondent. Perused the material available on record.

3. The contention of the petitioners is that Pandugala Pitchaiah executed a registered Will, dated 23.11.1990, bequeathing properties to the legal heirs of the father of the complainant and A-1. A-1 to A-3 fabricated an unregistered will, dated 15.02.1991, showing that all the properties are bequeathed in favour of them).

The petitioners contended that they are falsely implicated only in order to put pressure on the prosecution since the complainant is having knowledge of the unregistered Will, dated 15.02.1991. Hence, the filing of the complaint is only an abuse of process of Court. The first respondent has no authority to issue notice under Section 91 of Cr.P.C. to produce original unregistered Will, which is filed in the Civil Court. The allegations do not attract the provisions under Sections 468 and 420 IPC. The petitioners are the *bona fide* purchasers of the property from Smt. Venkata Lakshumma.

4. On the other hand, the 2nd respondent contended that mere filing of the civil suit does not preclude the criminal liability. Let the investigation may go on and it will reveal the facts.

5. A perusal of the record goes to suggest that basing on the complaint presented by the 2nd respondent, the first respondent registered a case in Crime No.31 of 2010 on 07.03.2010. The record further goes to suggest that A-2 is the wife of A-1. A-1 and the complainant are brothers and they are having two sisters, one of the sister is the wife of Pandugala Pitchaiah, who is brother-in-law of A-1. It is also alleged in the complaint that Pandugala Pitchaiah, who acquired number of properties and executed a Will, dated 23.11.1990, subsequently died on 05.04.1991.

6. The allegation in the complaint is that A-1 to A-3 fabricated an unregistered Will, dated 15.02.1991, saying as if all the properties are bequeathed in favour of his wife Smt. Venkata Lakshumma, to which A-4 and A-5 are attestors.

7. The record further goes to suggest that in respect of the same, the complainant already filed O.S.No.6 of 2008 in which petitioners 1 to 3 filed written statement.

8. The police, having registered FIR, issued notice under Section 91 of Cr.P.C. to the 1st petitioner calling upon to produce the original unregistered will, which is filed in O.S.No.6 of 2008.

9. Originally, the 2nd respondent filed a private complaint, which was forwarded to the police under Section 156 (3) of Cr.P.C. The above facts clearly go to suggest that the case is purely civil in nature. The 2nd respondent/complainant already filed O.S.No.6 of 2008. A-4 and A-5, who are arrayed as accused happened to be witnesses to the unregistered will, dated 15.02.1991. The complainant having filed O.S.No.6 of 2008, also filed a private complaint, which was forwarded to the police under Section 156(3) Cr.P.C. is nothing but abuse of process

of Court. Hence, I find sufficient grounds to quash the proceedings in Crime No.31 of 2010.

10. In the result, the Criminal Petition is allowed and the proceedings in Crime No.31 of 2010, on the file of the II Town Police Station, Kadapa, are quashed. The observations made in this order shall not hve any bearing on the civil suit.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

N.BALAYOGI, J

Date: 13th October, 2017

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