

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL PETITION No.2323 of 2011

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), is filed by the petitioners/Accused nos.1 and 2 in C.C.No.333 of 2010 on the file of the Court of the learned Judicial Magistrate of First Class, Chevella, Ranga Reddy District, taken cognizance for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860.

2. I have heard the submissions of Sri Chetluru Sreenivas, learned counsel for the petitioners/Accused nos.1 and 2 (hereinafter referred to as 'Accused nos.1 and 2'), and of Sri E.Madan Mohan Rao, learned counsel for the respondents 2 and 3/complainants (hereinafter referred to as 'complainants'), and also of the learned Public Prosecutor for the State of Telangana representing the first respondent. I have perused the material record.

3. The facts, submissions and the chronology of events that emerge for consideration from the pleadings and the submissions made in this petition, in brief, are as follows:-

The complainants at the inception, claimed as follows: 'They are the sons of one Bhimji. Bhimji and Humla are brothers, and are sons of Rashya. Rashya expired on 18.09.1989 leaving behind him, the father of the complainants, Bhimji, and Humla. Humla expired as a bachelor. Later, Bhimji also died, on 02.09.1998. Therefore, the complainants, who are the legal representatives of Bhimji, became entitled to the lands in survey number 368, 370, 385 and

391 of Kondakal Village. They approached the revenue authorities, on 27.06.2008, for mutation of the said lands in their names. They were informed to approach the civil Court and claim appropriate relief. Therefore, they filed O.S.No.219 of 2006 on the file of the learned Junior Civil Judge, Chevella, naming 'all concerned' as defendant without naming any defendant as eo-nominee party. The said suit was decreed, on 06.04.2009. They again approached the revenue authorities with the said decree in the said suit for mutation of the properties in the revenue records in their name and for obtaining the title deeds and pattadar pass books. At that time, the Tahasildar, Shankarpally, informed them that *vide* proceedings in ROR/1254/2006, dated 05.06.2006, some extent of property was mutated in the name of the 1st Accused in respect of some lands; and, that *vide* proceedings in ROR No.1258/2006, dated 05.06.2006, some extent of property was mutated in the name of the 2nd Accused. Having come to know about the same, the complainants obtained the copies of the RORs and came to know that the sale deed, dated 02.04.1999, was obtained by the 1st Accused and that the same was said to have been executed by Rashya, the grandfather of Complainants. They also came to know that there was one document in the record, namely, a receipt, dated 10.10.1999, said to have been signed by Rashya. However, Rashya expired on 18.09.1989, i.e., even before the date of the alleged receipt, dated 10.10.1999. Therefore, the respondents 2 and 3 came to know that the sale deed as well as the receipt are concocted and that they are false documents created to knock away the property belonging to them. Hence, they filed a private complaint under Section 200 of the Code before the learned

Magistrate stating that the Accused 1 and 2 are liable to be punished for the offence punishable under Sections 419 and 420 of the IPC. The learned Magistrate, by the order impugned in this Criminal petition, taken cognizance against the Accused 1 and 2, as already noted, for the offence punishable under Section 420 read with Section 34 of the IPC, and directed issuance of warrants against them. Aggrieved thereof, the Accused 1 and 2 are before this Court.

4. During the course of hearing, it is brought to the notice of this Court that after the petitioners/Accused 1 and 2 came to know about the decree in the afore-stated O.S.No.219 of 2008, they approached the Court of the learned Junior Civil Judge, Chevella, and filed a petition in I.A.No.452 of 2010 for setting aside the *ex parte* decree and that the said petition was allowed by the learned Junior Civil Judge by the order, dated 15.12.2010, and accordingly, the *ex parte* decree and judgment passed in the afore-stated suit in favour of the complainants are set aside and the suit is restored for trial and disposal on merits and that while the said suit was pending, the 3rd respondent, that is one of the complainants herein, that is, the 2nd plaintiff in the suit died and that the other complainant, that is, the 2nd respondent herein, that is, the 1st plaintiff filed a memo before the Court below seeking permission to withdraw the said suit *inter alia* stating that when he wanted to have a Succession Certificate for some bank purpose, he was mislead and one L.Jaya Reddy obtained a General Power of Attorney from the complainants and brought the above said suit without their knowledge and that he is not interested in pursuing the suit and, therefore, he is

withdrawing the suit unconditionally and that in view of the death of the 2nd plaintiff, there is no need to bring on record his legal representatives. The trial Court, having considered the memo in the presence of the 2nd respondent/2nd complainant herein, that is, the 1st plaintiff in the said suit, passed orders, dated 19.11.2012, dismissing the suit as not pressed unconditionally after recording the contents of the memo. Thus, eventually, the suit in O.S.No.219 of 2008 filed by the complainants was dismissed as withdrawn. It is undisputed and admitted that the basis for the claim in the complaint in respect of the subject lands is only the decree and judgment in the said suit, which was originally granted *ex parte*. Later, the *ex parte* decree passed in the suit is set aside. Further, on impleadment of the present Accused 1 and 2, that is, the petitioners herein as parties to the said suit, the suit eventually ended in dismissal since withdrawn by the surviving plaintiff. Therefore, the genesis or the basis for the complaint does not exist as on today, in the facts and circumstances stated. Further, the suit and the complaint were filed by a G.P.A. holder of the complainants and in the memo filed for withdrawal of the suit of the complainants/plaintiffs, it is stated that the GPA holder played fraud and filed the suit in respect of the property when the complainants only wanted a succession certificate for bank purposes. Therefore, when the complainants do not have any interest in the property, which is the subject matter, and when the 2nd complainant died and the 1st complainant submits that he has no interest in the property, the question of prosecuting the accused for the offence punishable under Section 420 read with Section 34 of the IPC does not arise for consideration. In that view of the matter, this Court is of the

considered view that continuing the proceedings in Calendar Case against the petitioners herein/Accused 1 and 2 would be an abuse of process of the Court and, therefore, the request of the petitioners/Accused 1 and 2 merits consideration.

5. Before parting, it is to be noted that the learned counsel for the 2nd respondent/2nd complainant would submit that the receipt that came to light on verification of the ROR records is dated 10.10.1999 and it was stated to have been executed by Rashya, while, in fact, said Rashya died on 18.09.1989 and that therefore, there is a *prima facie* case for proceeding against the petitioners/Accused 1 and 2. Be it noted that in view of the subsequent events, which are narrated supra and the dismissal of the suit of the complainants as withdrawn subsequent to the death of the 2nd complainant, when there is no genesis or the basis for the claim of the complainants, the question of existence of *prima facie* case against the petitioners/Accused 1 and 2 for proceeding against them does not arise for consideration in the considered view of this Court. Therefore, this Court finds that the said contention is devoid of merit.

6. Viewed thus, this Court finds that it is a fit case to grant the relief.

7. In the result, this Criminal Petition is allowed and the proceedings in C.C.No.333 of 2010 on the file of the Court of the learned Judicial Magistrate of First Class, Chevella, Ranga Reddy District, insofar as the petitioners herein/Accused 1 and 2, are quashed. Consequently, the warrants issued against the petitioners herein/Accused 1 and 2 stand recalled.

Pending miscellaneous petitions, if any, shall stand closed.

M.Seetharama Murthi, J

10th August, 2017
Bvv

