

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.5077 and 5773 of 2011

COMMON ORDER:

The criminal petitions are filed seeking to quash the proceedings against the petitioners in CC.No.120 of 2010 pending on the file of the Additional Judicial First Class Magistrate, Ramachandrapuam, Anaparthi, East Godavari District for the offences punishable under Sections 406, 420, 427, 448, 465 and 379 IPC.

2. Heard the counsel for the petitioners; the Public Prosecutor appearing for the 1st respondent and the counsel for the 2nd respondent.

3. The facts of the case, as pleaded in the complaint, are that the de facto complainant is the sister of respondent Nos.2 to 10, except respondent No.3 and that she was not given share of land in Sy.No.764/5 in Vadaparru Village, which was gifted to her and that the respondents herein constructed huge two storied building in the said land by creating fake documents and forged letters from korati Kantharaju, who is the younger brother of Korati Asheervadam.

4. The contention of the petitioners' counsel now is that, earlier a legal notice was issued by the very same complainants, wherein they admitted that the respondents themselves are in joint possession of the said property. A perusal of the said notice would show that it was served on the respondents calling upon

them to effect partition of the said property, stating that it is under 'joint' possession.

5. Counsel for the petitioners mainly argues that they failed to disclose the fact of giving earlier legal notice in the complaint and that would affect bona fides of the complaint given on 25.09.2007, thereby making the entire complaint incredible. He relies upon a ruling of the Supreme Court between *Mrs. Priyanka Srivastava and antoehr vs. State of Uttar Pradesh and others*¹ wherein at para No.27 of the judgment the Supreme Court observed that an affidavit should be filed along with the complaint, disclosing all facts and submits that in the said case, no such affidavit was filed. In answer to the said contention, counsel for the respondents submits that this complaint was filed way back in the year 2007 and hence, the question of filing this affidavit, as specified by the Supreme Court, does not arise. However, even if the affidavit is considered as mandatory for filing complaint, it would be a rectifiable mistake, and it shall not automatically result in quashing of the proceedings.

6. The contention of the petitioners counsel to the extent that the allegations will not attract the offences under Sections 406, 420, 427 and 448 IPC can be taken up for consideration. As admitted in the legal notice issued by the complainant the property is joint family property. Hence, the question of allegations attracting offences under Sections 406 and 448 does

¹ 2015(2) Crimes (SC) 179

not arise. Section 427 prescribes punishment for mischief. The allegations in the complaint do not anywhere spell that any part of the property was destroyed. Hence, proceedings in the criminal complaint insofar as offences under Sections 406, 427 and 448 IPC are concerned, are liable to be quashed.

7. Insofar as the offence punishable under Section 465 IPC is concerned, this court does not find it fit to quash the proceedings as the allegations made in the complaint that the accused submitted fake documents and forged letter from Korati Kantha Raju relinquishing his right in the property, not knowing that all the documents of joint property except those of the cultivated land at Vadaparru and Palathodu were with their elder brother and the first complaint, manifestly constitute an offence under Section 465 IPC. Unless the truth of the allegations is gone into, it cannot be said that the said offence is not committed by the petitioners.

8. Counsel for the petitioners vehemently argues that Section 379 IPC does not get attracted as the complaint did not spell about the same earlier. The question of spelling about theft does not arise, as the legal notice is issued only calling upon the petitioners to affect partition. The allegations in the complaint do attract Section 379 IPC as the alleged theft was from the house of her father and not from the property, which is admittedly under joint possession.

9. As regards the offence punishable under Section 420 IPC is concerned, there are several allegations, which constitute the offence under Section 420 IPC. The allegation that the accused lied all these years that there existed a Will written by Geddam Narayana Swamy, who bequeathed all the properties to his daughter, would nevertheless constitute an offence under Section 420 IPC. Hence, unless full trial is conducted as regards the said allegations, it would not be advisable to quash the proceedings for the said offences.

10. With the above observations, the Criminal Petitions are partly allowed quashing the proceedings in CC.No.120 of 2010 against the petitioners insofar as the offences punishable under Sections 406, 427, 448, and 379 IPC are concerned and the proceedings in C.C.No.120 of 2010 against the petitioners insofar as the offence under Sections 420 and 465 IPC are concerned, may go on. Interim stay granted by this court in CrI.P.M.P.No.5137 of 2011 in CrI.P.No.5077 of 2011, dated 27.06.2011, and CrI.P.M.P.No.5856 of 2011 in CrI.P.No.5773 of 2011, dated 14.07.2011, shall stand vacated.

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

T. RAJANI, J

November 16, 2017
LMV/GNR