

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE Nos.1186 AND 1188 of 2016

COMMON ORDER:

The selfsame petitioner-complainant filed these two Criminal Revision Cases, but respondents are different, except respondent No.1, which is the State. Respondent Nos.2 and 3 in Criminal Revision Case No.1186 are accused Nos.12 and 13 in C.C.No.99 of 2010 on the file of Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Kadapa, whereas respondent Nos.2 to 7 in Criminal Revision Case No.1188 of 2016 are accused Nos.3 to 8 in the very same Calender Case.

In the aforesaid Calender Case, accused Nos.12 and 13 moved an application in CrI.M.P.No.1813 of 2015 under Section 245 (1) of the Code of Criminal Procedure (for short, 'the Code') seeking to discharge them from the said Calender Case, whereas accused Nos.3 to 8 moved similar application in CrI.M.P.No.1638 of 2015 seeking their discharge from the case. Both the applications were allowed by two separate orders dated 10.02.2016.

Aggrieved by the orders dated 10.02.2016, the complainant filed the present Criminal Revision Cases mainly on the ground that the accused fabricated the sale deed and sold away the entire extent of Ac.0.35 cents in Survey No.321 of Tadigotla Village of C.K.Dinne Mandal, which was purchased by one Shaik Kamal Sab from one Pillamanchlagari Gangi Reddy. The relevant details have been

furnished in paragraph '2' of the complaint. The said Pillamanchlagari Gangi Reddy was the original owner of the land to an extent of Ac.7.17 cents in the said survey number and he sold away various extents of his land to five persons, amongst whom late Shaik Kamal Sab was one of the vendees.

Sri S.V. Ramana, learned counsel for Sri O.Manohar Reddy, learned counsel for the petitioner, would submit that in paragraph '10' of the discharge petition in Crl.M.P.No.1638 of 2015 filed by accused Nos.3 to 8, there is a positive admission made by the legal representatives of late Shaik Kamal Sab that Kamal Sab had property admeasuring Ac.0.35 cents and that admission would bind them and, therefore, the learned Magistrate did not take note of such categorical admission made by the legal representatives of late Shaik Kamal Sab. Learned counsel would also submit that the land to an extent of Ac.0.02 ½ cents and Ac.0.03 cents 118 sq. links being sold by Shaik Kamal Sab was also admitted and, therefore, after deducting these extents and also the land to an extent of Ac.0.06 cents 300 square links being acquired for road widening, what remains is only Ac.0.23 cents, but accused Nos.3 to 8, who are the legal representatives of Shaik Kamal Sab, sold Ac.0.35 cents and, thereby, the extent belonging to the complainant was included in the lands sold by them and this is nothing but commission of a criminal offence, which the complainant has been prosecuting. In that view of the matter, the

orders passed by the learned Magistrate require interference by setting them aside.

On the other hand, Sri M.N. Narasimha Reddy, learned counsel for respondent Nos. 2 to 7 in CrI.R.C.No1188 of 2016, would submit that it is purely a civil dispute, but not of the nature of a criminal offence and, in fact, a suit was also filed before the competent civil court for cancellation of sale deed and also declaration of title and recovery of possession and, thus, supports the orders of the learned Magistrate.

Now, the question is whether the request in the present complaint can be acceded to?

Perused the orders under challenge. In CrI.M.P.1638 of 2015, the learned Magistrate referred to the details of the complaint, rulings in **Paramjeet Batra v. State of Uttarakhand & others¹**, **S.B. Sinha v. Harjit Singh Bedi²**, **Ram Sumer Puri Mahant v. State of U.P and others³** and **Qadir Khan and others v. State of U.P and another⁴**, for the proposition that when civil dispute is pending between the parties, filing of complaint is abuse of process of court and liable to be quashed, and also referred to the suit in O.S.No.479 of 2009 on the file of IV Additional Junior Civil Judge and the complainant again withdrawing the same and filing yet another suit in

¹ (2013) 11 SCC 673

² 2007 (3) ALT (CrI) 281 SC

³ AIR 1985 SC 472

⁴ 2000 CrI.LJ 1677

O.S.No.318 of 2010 on the file of the Senior Civil Judge, Kadapa, for declaration of title and cancellation of sale deed executed by accused Nos.3 to 8 in favour of accused No.9, and opined that the learned Senior Civil Judge will decide the right of the parties and declare the title as per merits of the case and the commencement of parallel criminal proceedings would not be justified as the complaint discloses civil transactions and when a case of civil nature is given a cloak of criminal offence, in such a situation, civil court will take care of all those issues and, ultimately, allowed the application.

In Crl.M.P.No.1813 of 2015 filed by accused Nos.12 and 13, who are the document writers, the learned Magistrate, having referred to the details of the complaint and the role of the document writers in general, allowed the application.

The law laid down by the Honourable Supreme Court cannot be disputed by the learned counsel for the revision petitioner. The facts are very clear. The dispute is in relation to execution of sale deed in respect of the land of late Shaik Kamal Sab including the land of the complainant as per the complainant's version. It is true, the land to the extent of 0.05 ½ cents, perhaps, was sold by the legal representatives of late Shaik Kamal Sab and they offered even an explanation, which requires to be adjudicated upon in a civil suit, and, in case the learned Senior Civil Judge, Kadapa, finds that there was some sort of false motive or that to make wrongful gain, such a transaction was entered

into, a remedy is open to the revision petitioner to act appropriately.

There is no merit in the present revision cases.

Accordingly, the Criminal Revision Cases are dismissed.

Miscellaneous applications, if any pending in these revision cases, stand closed.

JUSTICE A.SHANKAR NARAYANA

09.11.2017

v v

