THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.1887 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.17 of 2011 on the file of the Court of the learned Judicial Magistrate of First Class, Jangareddygudem, West Godavari District.

2. I have heard the submissions of *Sri T. Pradyumna Kumar Reddy,* learned counsel representing *Sri Naram Nageswara Rao,* learned counsel for the petitioner-accused; of *Sri Nimmagadda Satyanarayana,* learned counsel for the 2nd respondent- *de facto* complainant; and, of the learned Public Prosecutor (AP) representing the 1st respondent-State. I have perused the material record.

3. At the outset, it is to be noted that the 2nd respondent-*de facto* complainant lodged a report with the Jeelugumili Police Station and the same was registered as case in Crime No.4 of 2009 for the offences punishable under Sections 420, 468, 471 and 506(2) of IPC. After due investigation, the investigating officer filed charge sheet and C.C.No.17 of 2011 was taken on file by the learned Judicial Magistrate of First Class, Jangareddygudem. The accused having entered appearance in the said Court filed this petition to quash the proceedings in the above Calendar Case against him. The 2nd respondent-*de facto* complainant is resisting this petition.

4. 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 graveman of the charge relating to the manipulation of partition lists is not made out during investigation. In any event the rights of the parties are matters of civil nature. A reading of the entire charge sheet does not disclose any forgery or manipulation of the partition lists alleged in the report. *Vide* orders, dated 22.09.2008, in W.P.No.19437 of 2008 as confirmed by judgment, dated 26.11.2008, in W.A.No.1469 of 2008, police protection was ordered to be given to the petitioner in accordance with law as and when a request is made by the petitioner. The said orders are misinterpreted by the police. The pendency of other cases against the petitioner have nothing to do with the allegations made in the report of the 2nd respondent. The petitioner cannot be made to suffer twice for the same offences. The investigating officer failed to see that cases in Crime Nos.65 of 2010 and 71 of 2010 are pending in the same police station against the 2nd respondent. The investigating officer failed to see that the books of Record of Rights issued by the competent revenue authorities under A.P. Rights in Land and Pattadar Pass Books Act exist in favour of the petitioner in respect of the lands in respect of which the partition list was alleged to have been created. The investigating officer failed to see the letter, dated 23.11.2009, addressed by the Tahasildar to the Manager, Andhra Bank, Kamaiahpalem, wherein it was clearly stated that the 2nd respondent himself tampered the records in respect of the lands which do not belong to him and which belong to the petitioner herein. The investigating officer has not examined the alleged documents on which the 2nd respondent relies. Therefore, the entire case of the 2nd respondent falls to the ground on this count. The investigating officer should have seen that the allegations in the report are vague and are levelled due to personal vendetta. No case is made out for prosecuting the petitioner. The investigating officer has not applied his mind to the facts of the case and mechanically filed the charge sheet affecting the valuable rights and liberty of the petitioner. The investigating officer should have seen that the past conduct of the petitioner is not relevant to the present case. The petitioner has not committed any offence. A reading of the charge sheet does not disclose commission of any offence warranting prosecution of the petitioner. Therefore, the proceedings against the petitioner-accused are liable to be quashed.

5. Per contra, the pleaded case of the 2nd respondent-*de facto* complainant, and the submissions made on his behalf, in brief, are as follows:

The petitioner-accused is the son of the younger brother of the 2nd respondent. Malladi Satyanarayana, grand father of 2nd respondent is the father of the petitioner-accused. The said Malladi Satyanarayana was having cultivable lands admeasuring Ac.11.88 cents at Mulagalampalli village in R.S.no.49/1, 49/2, 49/3 besides properties at other places. He had four sons viz., Rama Brahmam, Venkata Surya Rama Krishana Rao, Soma Sekhara Rao & Pattabhi Rama Rao. On 01.01.1985, the said Malladi Satyanarayana wrote a partition document by sharing the above land of Ac.11.88 cents as follows: Ac.1.85 cents to his 2nd son; Ac.4.46 cents to his 3rd son; and Ac.1.85 cents to his 4th son; [total Ac.8.16 cents]; and retained Ac.3.72 cents in his possession. Later the said land was given to the 2nd respondent. The petitioner-accused prepared forged document said to be a Will written by his father in favour of the petitioner/accused and other two brothers by showing that the entire extent of land i.e. Ac.11.88 cents was given to him by his father. The petitioner-accused thus cheated his brothers. In the year 2007, he asked the police and revenue for arranging protection to his lands by preparing the said forged document. When the complainant and others entered into the said land for cultivation, the petitioner-accused raised objection and filed a petition before the Mandal Executive Magistrate, Jeelugumilli, and also with Jeelugmilli Police Station asking to give protection to his lands. After thorough investigation, the revenue as well as the police officials refused to give protection to the petitioner/accused. On that the accused filed W.P.No.19437 of 2008 against the SHO, Jeelugumilli P.S., and S.P. of police, West Godavari District, Eluru. Having come to know of the same, the 2nd respondent made enquiries and applied, under the provisions of the Right to Information Act, for supplying the documents filed by the petitioner-accused; and, obtained certified copies of the said documents from the Tahasildar, Jeelugumilli. On a perusal of the said documents the forgery made by the petitioner-accused came to light. The original documents are with the 2nd respondent. The 2nd respondent filed W.A.No.1469 of 2008. After verification of all the records, the High Court issued orders stating that the entire land does not belong to the petitioner-accused and that no protection has to be provided to him and accordingly dismissed his W.P.No.19437 of 2008. The petitioner-accused deceived the High Court, police & the revenue officials and the 2nd respondent by creating forged documents. He shifted his residence from Mulagalampalli to Jangareddigudem and carrying on his activities. He is also the main accused in crime no.55 of 2002 of Jangareddigudem Police Station. In view of the complex fact situation of the case, the case has to be tried and the accused is required to face trial.

6.1 Learned counsel for the petitioner/accused while reiterating the pleaded case of the petitioner/accused submitted that allowing the prosecution of the accused in the calendar case would amount to abuse of process of law, in the facts & circumstances of the case. 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 petitioner/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 there from, 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.

6.2 In reply, the learned counsel for the petitioner/accused 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 report 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.

7. I have bestowed my attention and given earnest consideration to the facts and submissions. It is to be first noted that on a police report given against the petitioner-accused a crime was registered for the offences punishable under Sections 420, 468, 471 & 506 of IPC and on the police filing a final report, after investigation, the learned Magistrate has taken the Calendar Case on file against the petitioner/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.

8. Dealing first with the contention that the criminal proceedings are liable to be quashed on the ground that the dispute between the first informant/2nd respondent and the petitioner/accused is purely of civil nature, it is to be noted that on examination of the facts of the present case as borne out by the material record, it is manifest that the petitioner-accused is the son of the younger brother of the first informant/2nd respondent and that the allegations constituting the offences are that the petitioner-accused prepared forged documents including a Will said to have been written by his father in his favour and other two brothers by showing that the entire extent of land (Ac.11.88 cents) was given to him by his father and sought protection to his lands from the police and revenue authorities and that the enquiries revealed that the petitioner-accused resorted to forging documents and that the petitioner-accused also deceived the High Court, and revenue and police officials as well as the 2nd respondent by creating forged documents. On such careful

examination of the material record, this Court finds that this is not a case to brush aside the averments in the charge sheet and documents on record as frivolous, *mala fide* or vexatious and to term the dispute as one of purely civil nature. Therefore, the present proceedings in the Calendar Case cannot be quashed merely on the grounds that civil remedy is available or that the dispute is of civil nature. (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. The facts 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.
>
> 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.

9. Before proceeding further, 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/complainant has placed on record sufficient evidence to show a *prima facie* case against her under a particular penal provision of law. In case the prosecution or complainant 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. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution/complainant to prove its case beyond any shadow of doubt at the time of framing of the charge or at the pre-trial stage as the prosecution or the complainant 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/complainant 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."

10. In the light of the legal position obtaining, this Court at the time of examining the request for quashing the proceedings will not conduct a roving enquiry or a mini trial. 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 first information report 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* 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.

11. 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.

12. Before parting, be it noted that the petitioner-accused filed Crl.MP.No.7299 of 2017 requesting to receive the following documents:

a) Deposition copy of the then Mandal Revenue Officer, dated 08.09.2015.

b) Deposition copy of the then Branch Manager, Andhra Bank, dated 20.02.2017.

c) Written representation of petitioner's two brothers, dated 10.01.2011.

d) Copy of Award 11/2011, dated 08.12.2011, under Chintalapudi Lift Irrigation Scheme.

e) Copy of proceedings, dated 01.05.2015, under R & R Scheme.

f) Copy of order in Contempt Case No.1834/2011, dated 09.03.2012.

I have carefully perused all the above said documents. In the light of the facts and the reasoned findings in this order, supra, in the considered view of this Court, the said documents do not advance the case of the petitioner-accused any further and come in aid of the petitioner in support of his request for quashing the proceedings.

13. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

27.11.2017
Vjl