

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1153 OF 2017

ORDER:

This criminal petition, under Section 438 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioners/ A.1 and A.2 apprehending their arrest in connection with Cr.No.133 of 2015 of Balanagar Police Station, Mahaboobnagar District, registered for the offence punishable under Sections 417, 420 read with 468 of Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that on 24.04.2015 the *de facto* complainant lodged a complaint alleging that his grand father presented two acres of land to his mother during the marriage of his parents at Thangedupalli, Guntur District. Later on, his father sold away the property and purchased Ac.11.24 cents of land at Muddireddypalli Village, NandigamMandal, Mahaboobnagar District, in the name of the *de facto* complainant, who is allegedly born on 30.03.1991. For the last two years, the *de facto* complainant and his family lived in Hyderabad. At the instigation of the petitioners, who are none other than the elder brothers of the father of the *de facto* complainant, the father of the *de facto* complainant, created a death certificate of the *de facto* complainant, as if he is no more, and sold the property to third parties and allegedly committed an offence punishable under Sections 417, 420 read with 468 of I.P.C.

The main contention of the petitioners before this court is that the brother of the petitioners was blessed with two sons, but on different dates and both of them were named as Amarneni Surendra (A. surendra). Later on, their elder son, A. Surendra, died and his father obtained death certificate. Basing on the said certificate, the property was sold, not on the death certificate of the *de facto* complainant. Therefore, they did commit no offence punishable under Sections referred above and prayed to grant pre-arrest bail to the petitioners.

It is a strange case where the two sons were named as A.Surendra and one of them died. But, according to the contention of the petitioners, the *de facto* complainant was born on 30.03.1991 at Guruvaipalem, Narasaraopet Mandal, Guntur District, and the second son was born on 30.03.1993, the death certificate allegedly obtained for the death of second son- A. Surendra, not the death certificate of the petitioner. But it is difficult to decide whether the certificate pertains to the death of the second son or first son at this stage.

The counsel for the petitioners produced several proceedings issued by the Government of Telangana regarding mutation, and also Photostat copy of birth certificate of A. Surendra, who was born on 30.03.1991 i.e. first son, photo stat copy of secondary school certificate evidencing that the second son A.Surendra was born on 30.03.1993, and also bonafide/ conduct certificate dated 02.02.2000 issued by the St.Alphonsa's High School, Hyderabad, shows that A. Surendra s/o. A.Venkat Rao was born on 30.03.1993. The birth certificate of the *de facto* complainant-

A. Surendra produced before this court was issued by the Government of Andhra Pradesh, Department of Municipal Administration disclosed that he was born on 30.03.1991.

The death certificate of A. Surendra shows that one A.Surendra died on 30.11.1998, the date of appearing for SSC examinations held in the month of June, 2008. This itself clearly show that A. Surendra, alleged second son is alive by the date of his appearance for the SSC examinations held in the month of June, 2008. Therefore, Photostat copy of the death certificate produced before this court appears to be a false document. Whether it pertains to the first son or second son, both are alive by 2008 atleast.

Therefore, material on record clearly shows that the death certificate was created and sold the property, as if one son by name A. Surendra, whether he is first or second son named as Amaraneni Surendra. Sale of such property based on such death certificate would constitute an offence punishable under Sections 417, 420 read with 468 of I.P.C.

The prime requirement to grant pre-arrest bail is that the court has to *prima facie* be satisfied that the petitioners did commit no offence punishable under Sections 417, 420 read with 468 of I.P.C. and that there are no chances of interfering with further investigation in the event of the petitioners are enlarged on pre-arrest bail.

Here the material produced before this court is that the second son of the petitioner is alive by 2008, but the certificate

shows otherwise. In such case, it is difficult to conclude *prima facie* that the petitioners did commit no offence. Hence, it is not a fit case to grant pre-arrest bail exercising power under Section 438 of Cr.P.C.

At this stage, learned counsel for the petitioner requested to permit the petitioners to surrender before the Judicial Magistrate of First Class, Mahaboobnagar District, and file an application under Sections 437 and 439 of Cr.P.C. and to direct the learned Magistrate to decide the application on the same day.

Acceding to the request of the counsel for the petitioners, I deem it appropriate to permit the petitioners to surrender before the learned Magistrate and on filing an application under Sections 437 and 439 of Cr.P.C., after service of notice on the Public Prosecutor, the learned Magistrate shall decide the same on the same day, in accordance with law.

With the above observation, the criminal petition is disposed of.

M. SATYANARAYANA MURTHY, J

21.02.2017
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