

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.756 AND 2624 OF 2017

COMMON ORDER:

Both these petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in Calendar Case No.352 of 2016 on the file of the XXVI Metropolitan Magistrate, Cybderabad at Maheshwaram.

2. The petitioners are arraigned as accused Nos.1 and 2 in the aforesaid Calendar Case. They alleged to have committed the offences punishable under Sections 420 and 406 of Indian Penal Code, 1860 (for short 'IPC') along with accused No.3.

3. Heard Sri M.A.K. Mukheed, learned counsel for the petitioner - accused No.2 in CrI.P. No.756 of 2016; Sri D.V.N. Acharya, learned counsel for the petitioner - accused No.1 in CrI.P. No.2824 of 2017, and the learned Additional Public Prosecutor for the State of Telangana.

4. Certain facts, which are absolutely relevant for the purpose of appreciating the submissions made by the respective learned counsel for the petitioners, are that respondent No.1 herein, who is *de facto* complainant - Mirza Mustafa Ali Baig, and petitioner in CrI.P. No.2624 of 2017, who is accused No.1 - Mirza Humayun Ali in the aforesaid Calendar Case, are natural brothers and their father is late Mirza Abbas Ali Baig. Both of them purchased agricultural land with

equal shares comprised of Survey Nos.361, 362, 365, 407, 408, 411, 412, 413/1, 413/2, 414, 416 to 458, 459/1, 469/2, 460 and 462 to 468 along with an old house called 'Gadi' located at Turkaguda, hamlet of Rachulur village, Kandukur Mandal, Ranga Reddy District, belonging to accused Nos.2 and 3 i.e., Ms. Askari Begum D/o Late Mirza Dilawar Ali Baig and Mirza Imam Ali Baig S/o late Mirza Dilawar Ali Baig, under an agreement of sale, dated 17.10.2005 and paid considerable amounts there-under. Later, the two persons have executed a registered irrevocable General Power of Attorney bearing document No.30/IV/2005, dated 31.10.2005, authorizing the *de facto* complainant and his brother (accused No.1) to alienate the said land and some other lands, admeasuring Acs.36.14 guntas and also the land covered by Survey No.361. Thereafter, it appears that the said two persons (accused Nos.2 and 3) colluded together with his brother (accused No.1, who is petitioner in Crl.P. No.2624 of 2017), and alleged to have created certain documents, such as Memorandum of Oral Gift, dated 01.07.2015 in respect of some of the lands and, accordingly, his brother - accused No.1 made an application before the Tahsildar, Kandukur Mandal for mutation of his name in the revenue records as owner of the lands in Survey Nos.422, 423, 440, 459/1, 460 and 468, admeasuring Acs.12.36 guntas. Thus, having executed the agreement of sale and irrevocable General Power of Attorney in favour of the *de facto* complainant and accused No.1, accused Nos.2 and 3 have no right to execute a Memorandum of Oral

Gift in favour of accused No.1, and thereby committed the offence of cheating.

5. Both the learned counsel would commonly contend that the Irrevocable General Power of Attorney does not confer any title over the *de facto* complainant. Though, the Memorandum of Oral Gift was dated 01.07.2015, there was inordinate delay in lodging the complaint and, therefore, sought to quash the proceedings in the aforesaid Calendar Case.

6. Firstly, the question of cheating and mischief by accused Nos.1 and 2 in the aforesaid Calendar Case can be examined only when a full-fledged trial takes place in the Calendar Case. The submission touching disputed questions of facts, which are required to be resolved in the aforesaid Calendar Case as to whether the agreement of sale and the Irrevocable General Power of Attorney executed by accused Nos.2 and 3 in favour of *de facto* complainant and his brother - accused No.1 would have any effect and the Memorandum of Oral Gift, dated 01.07.2015 executed by accused Nos.2 and 3 in favour of accused No.1 was tainted with dishonest intention. Just merely basing on bare facts projected by the petitioners, proceedings in the aforesaid Calendar case cannot be quashed viewing their prosecution would amount to the abuse of process of Court as sought to be viewed by the learned counsel for the petitioners. There is no merit in the present petitions.

7. Both the petitions, are therefore, dismissed. However, the learned XXVI Metropolitan Magistrate, Cyberabad at Maheshwaram, is directed to dispose of the aforesaid Calendar Case as expeditiously as possible uninfluenced by any of the observations made hereinbefore.

As a sequel thereto, miscellaneous petitions, if any, pending in both the petitions stand closed.

April 11, 2017.
Mgr

A. SHANKAR NARAYANA, J

