

THE HON'BLE DR JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4864 of 2017

ORDER:

Petitioner is A.1. Besides herself, there are two more accused including her son, A.3. The second respondent is the complainant in C.C.No.252 of 2014, which is the outcome of the second respondent's private complaint, dated 02.04.2014. After recording sworn statements of the complainant, L.W.1, and another witness, L.W.2, the learned Magistrate has taken cognizance of offence punishable under Section 420 IPC against A.1.

The averments mentioned in the complaint show that A.1 and A.2 are the maternal aunts of the complainant, A.3 is the son of A.1, and the father of complainant permitted A.1 and A.2 to stay at the disputed house, as respective husbands of A.1 and A.2 left them, and taking advantage of the same, the accused manipulated and forged the documents claiming the property at Tilaknagar, Hyderabad, as if it is their property. A.2 filed O.S.No.2625 of 2011 on the file of XIX Junior Civil Judge, Hyderabad, seeking permanent injunction. In the said suit, she filed a document projecting that it is a mortgage deed, dated 05.02.1978, whereas the stamp paper used for it was purchased

on 27.02.1978. That was marked as Ex.P.7 in the injunction application. In the said suit, it is the claim of the accused that the mother of A.1 and A.2 mortgaged the property and the same was released by A.1 and gifted to A.2, as such, A.2 alone is entitled to claim right over the property and thereby, prayed to restrain others from interfering with her peaceful possession and enjoyment of the property. The complainant contested the same and the suit was ended in dismissal. The second respondent/complainant submitted that Ex.P.7 was filed by the accused in the injunction application pending the suit, only with criminal intention to grab the property as if it is their property in order to cheat him and to cause wrongful loss to him and to gain wrongfully by them, thereby, it is an offence. Hence, to take cognizance.

In his sworn statement, the second respondent/complainant reiterated the same, though not in specific words, apart from the other facts that A.1 and A.2 are the daughters of Kistamma and Pochaiah, who had also five sons. The claim under the mortgage deed is for Rs.5,000/-. It is a forged document. The property mortgaged is a patta land distributed by the Government in 1975 with the condition of non-alienation of the same up to 10 years.

In his sworn statement, L.W.2 – R. Amarnath, who is none other than the cousin brother of L.W.1, complainant, stated about the civil suit and that the so called mortgage deed relied therein is not genuine.

In the said C.C., before pre-charge enquiry, the petitioner/A.1 filed Crl.M.P.No.1405 of 2015 under Section 245(2) Cr.P.C. seeking discharge. It reads, having perused the sworn statements of L.Ws.1 and 2, the learned Magistrate had taken cognizance of the offence only against A.1 and dismissed the private complaint against A.2 and A.3 on the ground that there are no allegations worth the name against them. The cognizance of the offence taken by the learned Magistrate against the petitioner/A.1 is the outcome of non-application of mind for there is no accusation, much less, allegation worth the name against the petitioner/A.1. It could be seen that against the judgment in O.S.No.2625 of 2011 filed for permanent injunction, A.S.No.309 of 2013 was filed before the learned X Additional Chief Judge, City Civil Court, Hyderabad, and in the injunction application, there is no finding recorded that Ex.P.7 is a fabricated or forged document, as such, taking cognizance of offence supra against A.1 is unsustainable, and there is nothing even to show, who forged the mortgage deed and when it is

forged, much less, for the purpose of cheating, to attract the offences punishable under Sections 468 and 420 IPC and the cognizance of offence taken by the learned Magistrate is liable to be set aside and the petitioner/A.1 is to be discharged.

As per the counter filed by the complainant, A.1 is the main person, who created the document to grab the property, in which, he got share, and A.1 claimed that the alleged mortgage deed was executed on 05.02.1978 whereas the stamp paper was purchased on 27.02.1978. This shows that the document is a created one. He relied upon the decision of the Apex Court in **J.P. Srinivasa and Sons v. Gwalior Sugars**¹, according to which, creation of a stamp paper which was purchased subsequently amounts to forgery.

The learned Magistrate by observing whether A.1 is instrumental to the document or not is to be decided after completion of recording evidence; there is nothing to discharge her before pre-charge enquiry and even in the judgment in O.S.No.2625 of 2011, there is no finding recorded that the said document is a forged or fabricated one, passed order, dated 29.08.2016 dismissing Crl.M.P. Impugning the said order, Criminal Revision Petition No.212 of 2016 was filed by the sole accused/A.1 and the learned IV Additional Metropolitan Sessions

¹ AIR 2005 SC 83

Judge vide order, dated 24.03.2017, dismissed the same with an observation that while dismissing Crl.M.P.No.1405 of 2015 vide order, dated 29.08.2016, the learned Magistrate clearly observed that the matter is to be decided after completion of trial and thereby, there is nothing to interfere while sitting in revision.

The grounds urged in the quash petition, in a nut-shell, are that the concurrent findings, taking cognizance of offence and dismissal of the discharge application are the outcome of non-application of mind, no offence under Section 420 IPC is made out against the petitioner and though the alleged document was marked as Ex.P.7 in the injunction application, there is no finding recorded in the judgment in O.S. No.2625 of 2011 that it is a forged or fabricated one.

Heard learned counsel for the petitioner, who reiterated the same, and learned counsel for the second respondent, who submits that the concurrent findings do not require interference, and perused the material on record.

In the learned Magistrate's order dismissing the discharge application, Crl.M.P.No.1405 of 2015, at para 5, there is a reference to the expression of the Apex Court in **J.P. Srinivasa** (supra) in relation to making out an offence of forgery. As can be

seen from the order impugned, cognizance of the offence punishable under Section 420 IPC was taken by the learned Magistrate. Forgery is different from cheating and Section 468 IPC speaks of forgery for the purpose of cheating and not mere forgery. There is nothing in the sworn statements of the complainant and the other witness that it is the petitioner/A.1 that forged the document, as such, the question of taking cognizance of the offence of forgery, much less, for any offence of forgery for the purpose of cheating, does not arise. It is not even the case of the second respondent that the civil suit is filed by the petitioner/A.1. In fact, the civil suit is filed by A.2. Thereby, if at all cognizance is taken for the offence punishable under Section 471 IPC for using the forged document, then, it could be against A.2, and nothing is shown against the petitioner/A.1 that she used the document as if it is genuine in any proceeding before any authority or otherwise. Even for arguments sake, it cannot be presumed that the document is a forged one.

Having regard to the above, the orders of the Courts below in dismissing the discharge application filed under Section 245(2) Cr.P.C. are unsustainable.

Hence, the Criminal Petition is allowed, quashing the dismissal orders as well as taking cognizance of offence

punishable under Section 420 IPC by the learned Magistrate against the petitioner/A.1 in C.C.No.252 of 2014.

Pending miscellaneous applications, if any, shall also stand disposed of.

Dr. B. SIVA SANKARA RAO, J

12th OCTOBER, 2017.

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