

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.14635 OF 2016

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), by the petitioner - complainant questioning the dismissal order, dated 09-09-2016, in Criminal Revision Petition No.37 of 2016 passed by the learned V Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, Telangana State.

2. On the complaint of the revision petitioner, offences punishable under Sections 420, 406, 423, 468, 481, 403 and 120B IPC were alleged against respondent Nos.2 to 4 herein, who are arraigned as accused Nos.1 to 3 in Calendar Case No.141 of 2010 on the file of the XIII Metropolitan Magistrate, L.B. Nagar, Hyderabad. The complaint was referred by the learned Magistrate under Section 156 (3) of the Code for investigation and report. Pursuant thereto, charge sheet was filed alleging the aforesaid offences against respondent Nos.2 to 4 herein.

3. During pendency of the proceedings in the Calendar Case No.141 of 2010, the revision petitioner filed Criminal M.P. No.3093 of 2015 under Section 216 read with 240 of the Code for addition of charge punishable under Section 82 of the Registration Act, 1908 (for short 'Act 1908') on the premise that the evidence of PWs.1 to 10

would clearly prove the involvement of respondent Nos.2 to 4 herein in the commission of offence punishable under Section 82 of the Act, 1908. It appears that, the request so made on the allegation that the sale deed in favour of the complainant vide document No.544 of 1989, dated 20.01.1989 exhibited as Ex.P-2, and the agreement of sale - cum - General Power of Attorney vide document No.17079 of 2006, marked as Ex.P-6 were registered in the same office and, thus, it necessitates to frame a charge under Section 82 of the Act, 1908 additionally for proper adjudication and take penal action against respondent Nos.2 to 4. The learned Magistrate, by his order, dated 20.01.2016, dismissed the said petition on the sole ground that Section 83 of the Act, 1908 mandates that the Sub-Registrar or Registrar with the permission of the Inspector of Stamps and Registration has to lodge complaint, and such permission was not filed. Holding that in the absence of such permission, the petition is not maintainable, rejected it.

4. The complainant assailed the aforesaid order in Criminal Revision Petition No.37 of 2016 before the V Additional Metropolitan Sessions Judge, L.B. Nagar.

5. The revisional Court places reliance on the decision in **Musammat Godindia and others**, which judgment was rendered by the Patna High Court basing on a full-bench decision of the Calcutta

High Court in **Gopinath v. Kuldip Singh**¹, wherein it was laid down that no permission was necessary for a complainant to institute a charge under Section 82 of the Registration Act and also the decision of this Court in **Shaik @ Mohammed Gousinnisa Begum @ Gousia Begum and others v. Shaik Abdul Rasheed and another**², wherein the very same proposition was laid down, but, however, relying on a decision in **P. Krithikalakshmi v. Sri Ganesh and others**³, wherein it was held that neither the prosecution nor an accused has a right to file a petition under Section 216 of the Code requiring the Court to frame additional charge; it is within the domain of the Court to frame additional charge or alter an existing charge; a revision under Section 397 of the Code is not maintainable as against an order passed by the Court below in the application filed under Section 216 of the Code in view of the specific bar under Section 397 (2) of the Code; that no revision could be filed as against an order passed in an interlocutory petition and justified the dismissal of an application filed by the prosecution under Section 216 of the Code for inclusion of an additional charge under Section 302 IPC against the respondents - accused.

6. Thus, relying on the aforesaid decision in **P. Krithikalakshmi's Case** (Supra), the revisional Court opined that framing of additional charge under Section 82 of the Act 1908 is

¹. 11 C. 566 (F.B.); 5 Ind. Dec (N.S.) 1136

². 2013 LawSuit (AP) 695

³. 2013 (3) Madras Weekly Notes (Cri) 521

within the domain of the lower Court and also opining that a revision is not maintainable under Section 397 of the Code in view of the bar inlaid in sub-Section 2 thereof, dismissed the revision.

7. Heard Sri M.M. Ali, learned counsel for the petitioner – accused, the learned Additional Public Prosecutor for the State of Telangana and Sri Madhusudhan Rao, learned counsel for other respondents.

8. Of course, no notice is ordered as it is opined that it is desirable to remit the matter to the trial Court for the reason, the ground on which the learned Magistrate dismissed the petition, was for want of permission as required under Section 83 of the Act, 1908 to launch prosecution.

9. During course of arguments, the learned counsel for the petitioner placing reliance on the decisions rendered by a Single Judge of this Court in **Shaik @ Mohammed Gousinnisa Begum @ Gousia Begum's Case** (Supra 2) and in **Anant Prakash Sinha @ Anant Sinha v. State of Haryana and another**⁴ rendered by the Hon'ble Supreme Court on 04.03.2016, would submit that in **Shaik @ Mohammed Gousinnisa Begum's Case** (Supra 2), a Single Judge of this Court placing reliance on the decision of the Hon'ble Supreme Court in **Dharamdeo Rai v. Ramnagina Rai**⁵ allowed the

⁴. (2016) 6 SCC 105

⁵. AIR 1972 SC 928

prosecution of petitioner Nos.2 and 3 while dismissing in respect of petitioner Nos.1 and 4, where the question was whether without permission, an offence under Section 82 of the Act, 1908 can be prosecuted. In **Anant Prakash Sinha's Case** (Supra 4), an application under Section 216 of the Code was filed for framing an additional charge under Section 406 IPC by the wife against the husband and mother-in-law. The Hon'ble Supreme Court held that filing of an application for framing of such a charge was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of charge; the court could have done it *suo motu*; in such a situation, the learned Magistrate cannot be faulted in entertaining the said application; the learned Magistrate has referred to the materials and recorded his *prima facie* satisfaction; there is no error in the said *prima facie* view; even no error can be perceived in the revisional order, by which, the revisional Court has set aside the charge framed against the mother-in-law and affirmed the order of the High Court in expressing its disinclination in passing the order.

10. Now, the question is, whether the learned Magistrate did examine any such material available on record to make out a *prima facie* case for the offence punishable under Section 82 of the Act, 1908. The order passed by the learned Magistrate would read thus:

“Heard both sides. As per Sec.83 of Indian Registration Act, the Sub Registrar or Registrar with the permission of Inspector of Stamps and Registration has to lodge

complaint which is not filed. In the absence of which, the petition is not maintainable. Hence rejected.”

Except the ground that permission to launch prosecution is *sine qua non* for the offence punishable under Section 82 of the Act, 1908, and want of such permission as contemplated under the provisions of Section 83 of the Act, 1908, the petition is not maintainable, rejected the request. The revisional Court proceeded on the premise that the application cannot be maintained for framing of additional charge either by the *de facto* complainant or the accused and, more particularly, a revision under Section 397 of the Code is not maintainable in view of the bar embedded in sub-section 2 thereof. It is, therefore, imperative to remit the matter to the learned Magistrate to examine the request made on the points:

- (i) whether a *de facto* complainant can directly file an application instead of the prosecuting agency i.e., State;
- (ii) to examine the evidence of PWs.1 to 8, in the direction of assessing whether any *prima facie* material to frame additional charge for the offence punishable under Section 82 of the Act, 1908 is available;
- (iii) to examine, in the light of the authorities referred to herein before in the context of whether permission under Section 83 of the Act is absolutely indispensable.

11. Since, the revision petitioner has not chosen to file the evidence of PWs.1 to 8 recorded by the trial Court and even revisional Court has not embarked on this aspect of the case, it is absolutely necessary to remit the matter.

12. Therefore, the present Criminal Petition is allowed remitting the matter to the learned XIII Metropolitan Magistrate, Cyberabad at L.B. Nagar, restoring Crl.M.P. No.3093 of 2015 in Calendar Case No.141 of 2010 to its file. The learned Magistrate shall dispose of the said petition keeping in view the aforesaid three points and in accordance with law and uninfluenced by any of the expressions/opinion/observations, if any, made in the instant order.

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

A. SHANKAR NARAYANA, J

February 21, 2017.

Mgr