

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.2910 of 2017

JUDGMENT:

The present Criminal Revision Case is preferred under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') aggrieved over the order dated 9.10.2017, in Criminal M.P. No.341 of 2017 in C.C. No.191 of 2015 passed by the learned Judicial Magistrate of First Class, Hindupur, Anantapur District, whereby and whereunder, the petition filed under Section 239 of Cr.P.C. by the revision petitioner to discharge him of the offences punishable under Sections 468 and 471 of I.P.C. was rejected. The learned Magistrate referring to the averments in the petition, that the *de facto* complainant executed an Agreement of Sale, dated 21.11.2009, and despite issuing notice to perform his part of obligation the *de facto* complainant did not answer it and thereby he was compelled to file suit in O.S. No. 119 of 2009 on 31.12.2009 to enforce the Agreement of Sale. The *de facto* complainant, on the other hand, filed a complaint on 17.1.2010 with the police alleging that the petitioner forged his signatures and brought into existence the alleged Agreement of Sale, dated 21.11.2009.

2. Heard Sri P. Narahari Babu, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. The learned Assistant Public Prosecutor for the State of Andhra Pradesh tendered arguments. He canvassed that the allegation

is that the document was forged even prior to filing of the suit and there is an opinion tendered by the Handwriting Expert under Section 45 of the Indian Evidence Act, 1872, opining that the signatures are forged and, therefore, there is prima facie case to proceed with the trial.

4. One of the contentions raised by the revision petitioner was that the Agreement of Sale is hit by Section 195 of Cr.P.C. and the bar is provided to take cognizance for the offence in the present case and, therefore, sought to discharge. The learned Magistrate, having formulated the point for consideration, and, referring to the rulings in **Padohi Ram v. State of Uttar Pradesh and another** (1990 CRI. L.J. 495) and 1989 ALL. L.J. 186, relied on by the learned counsel for the petitioner in the context of the bar contained in Section 195 of Cr.P.C. and also referring to the ruling of the Hon'ble Supreme Court in **Rugmini Amani by LRs v. Narayana Rao Reddy and others** (AIR 1998 SC 1121) held that the alleged forgery did not take place while the civil suit is pending, and, the bar contained in Section 195 (1) (b) (ii) of Cr.P.C. would not operate, and, therefore dismissed the application.

5. The learned Magistrate has also extracted the expression of the Hon'ble Supreme Court in **Rugmini Amani by LRs v. Narayana Rao Reddy and others** (supra). Admittedly, the alleged forgery was prior to filing of civil suit itself, as the civil suit was filed to enforce agreement of sale, which, of course, was decreed and it appears civil appeal is pending challenging the judgment and decree

therein. Thus, the revision petitioner, at this stage, has got advantage of a decree passed by civil Court in his favour, but it is not brought to the notice of the Court whether there has been either stay or suspension of the said judgment.

6. On the other hand, the opinion expressed by the Expert under Section 45 of the Evidence Act to the effect that the signatures occurring on Agreement of Sales are forged is in favour of the *de facto* complainant, staring at the revision petitioner.

7. So far as the bar contained in Section 195 of Cr.P.C. is concerned, leaving it open to canvass once again in the final hearing of the Calendar Case, it is to be held that a full-fledged trial alone would resolve the core issue occurring in the present Calendar Case.

8. There is no error that has crept, in the order under challenge. Hence, the present Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA

Dt. 13.12.2017
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