

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION NO.328 OF 2014

ORDER:

This petition is filed by the petitioner-A1 under Section 482 Cr.P.C. to quash the proceedings in Cr.No.384 of 2013 on the file of the Station House Officer, Karimnagar II Town P.S., Karimnagar District, registered for the offences punishable under Sections 419, 420, 423 and 120-B IPC.

2. Heard learned counsel for the petitioner, learned Assistant Public Prosecutor representing the State, learned counsel for the 2nd respondent-de facto complainant and perused the record.

3. Learned counsel for the petitioner would submit that the dispute between the parties is civil in nature. The petitioner said to have sold 97.62 square yards of land to A2. There are no mala fides. The alienation do not constitute the offences referred above. On a complaint filed before the Judl. Magistrate of I Class, the same was registered as a crime and investigated into and ultimately, prayed to allow the petition.

4. Learned counsel for the 2nd respondent- de facto complainant would submit that the property sold under a sale deed is a joint family property. The petitioner-A1 has no right, title and interest to alienate the same. By alienating the property without there being any partition, amounts to cheating and depriving the other joint owners of their legitimate right in the joint property. The allegations made in the complaint do constitute the offences referred supra and ultimately, prayed to dismiss the petition.

5. Learned Assistant Public Prosecutor supported the 2nd respondent-de facto complainant.

6. In view of submissions made by both sides, the point for determination is whether the proceedings Cr.No.384 of 2013 on the file of the Station House Officer, Karimnagar II Town P.S., Karimnagar District, are liable to be quashed?

7. As per the averments of the complaint, A1 sold 97.62 square yards of land to A2 with the assistance of Hanumantha Reddy. Both of them alleged to have jointly conspired with the wife and sons of A2. When the de facto complainant applied for Encumbrance Certificate and got it on 14.08.2012, he came to know about the sale of 97.62 square yards under a registered sale deed by A1 in favour of A2. It is also stated in the complaint that the complainant and others are owners/tenants of land ad-measuring Ac.0.09 guntas in Sy.No.1430 situated at Sawaran Street, Karimnagar. The respective shares of the joint owners/tenants are not being identified by metes and bounds. Therefore, A1 has no right or definite identifiable share to alienate the property to third party/A2. The alienation to third party is a breach of trust and it tantamount to cheating of other persons including the de facto complainant. Further, it is alleged that the petitioner-A1 made wrongful gain and caused wrongful loss to the other joint owners. It is also mentioned about issuance of legal notice to A1 and A2 and also submitted that there was no response from them.

8. It is not in dispute that the petitioner-A1 is not a joint owner of the land ad-measuring Ac.0.09 guntas in Sy.No.1430 situated at Sawaran Street, Karimnagar. In the

event of alienation of joint property partly by one of the joint owners for the necessities or other requirement, it cannot be held that there is element of cheating and it caused wrongful loss to the other joint owners and possessors of property. A question would also come up whether there was any partition orally or written between the joint owners. Merely because one of the share holders alienated the property owned by him to other person jointly, it would not tantamount to cheating. Even in case of alienation of joint family property in favour of third person, the person who purchased the property steps into the shoes of his vendor and he is also entitled to own property along with other joint owners. The purchaser cannot claim exclusive right, title and interest over the property purchased. So viewed from any angle, it cannot be held that the allegations do constitute the offences referred supra. Aggrieved parties have to work out their remedies before the competent civil Court. The continuation of proceedings on criminal side is nothing but abuse of process of law.

9. Accordingly, the Criminal Petition is allowed as prayed for quashing the proceedings in Cr.No.384 of 2013 on the file of the Station House Officer, Karimnagar II Town P.S., Karimnagar District, pending against the petitioner-A1. Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 06-03-2018.

Hsd