HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5609 of 2015

ORDER:

The petitioners are accused Nos.1 & 3 as per the charge sheet in CC.No.320 of 2012 among 6 accused where the learned Magistrate has taken cognizance from the police final report for the offences punishable under Sections 420, 423, 465, 467, 468 & 471 IPC which is outcome of crime No.88 of 2010 of Bobbili Police Station, Vizianagaram, on the report of one R.Eswara Rao the defacto complainant. In fact the defacto complainant filed a private complaint against the 4 accused including the petitioners arrayed as A.2 & A.4 for the said offences on 14.12.2009 and the learned Magistrate referred the same to the police for investigation under Section 156(3) Cr.P.C. The police supra therefrom registered the crime on 07.04.2010 for the offences supra and it is after investigation police filed final report.

2. The sum and substance of the accusation from the said private complaint and police final report after investigation by citing 5 witnesses other than the ASI registered the crime and the SI respectively investigated and filed the charge sheet as Lws.6 to 8 of which LW.1-defacto complainant, LW.2 to 4 are the witnesses to the so called admission of accused undertaking to pay the amount and failed to pay.

3. The sum and substance is that T.Bhaskar Rao and T.Bhagavananda Reddy represented to the complainant that

they got 90 acres of land purchased under agreements for sale from third parties and are going to resell, the complainant accepted their offer after negotiation fixing the rate at Rs.1,69,600/- per acre. A1 represented of he purchased the land under the agreement of sale dated 26.10.2006 from B.Krishnamurthy, B.Suryanarayana, Ch.Appala Narasamma, Ch. Appalanaidu of Botchavanivalasa and A.2 represented of purchased under agreement of sale dated 21.01.2007 from A.3-K.Uma and both accused Nos.1 & 2 represented the total extent, they purchased under the above 2 agreements is about 90 acres and complainant believed them in entering the agreement for purchase of the lands supra. They also shown the respective lands of the villages, the complainant paid Rs.2,00,000/- advance on the date of negotiation on 30.01.2007 and agreed to pay Rs.25,00,000/- on 06.02.2007 and obtained agreement from A.1 & A.2 and agreed to pay another amount of Rs.10,00,000/- on 13.02.2007 and A.1 and A.2 passed receipt on 09.02.2007 besides executed agreement on 30.01.2007 acknowledging received of Rs.15,00,000/- on that day and it is agreed to cause the land surveyed by end of February 2007 to arrive the correct extents to pay balance therefrom and to get sale deeds registered. On 14.02.2007 A.1 & A.2 received another sum of Rs.10 lakhs. On 19.02.2007 A.1 & A.2 demanded another amount of Rs.5 lakhs, which the complainant paid to A.4 cousin of A.2 as per directions of A.1 & A.2. Later the complainant paid Rs.3 lakhs before elder

B.Ramarao for which no receipt passed by A.1 & A.2 and thus in all, the complainant paid Rs.33 lakhs believing the representations of A.1 & A.2 and demanded them to survey the land to ascertain the extent which the A.1 & A.2 were postponing. Later A.1 started saying the documents obtained by him from the ryots were misplaced and he will get the ryots contacted over phone to complainant and made phone calls as if to the ryots and made believe the complainant that there were agreements. A.2 shown agreement for sale executed by A.3 in favour of A.2, the complainant believed the representations. A.2 further brought A.3 to imbibe the belief in the mind of the complainant, A.3 shown agreement obtained from his vendor Kamal Singh Baid of Visakhapatnam and they made him to believe however they were postponing. The complainant on enquiries came to know that ryots did not execute any agreements for sale in favour of A.1 for 50 acres and what the agreement styled by A.2 obtained from A.3 who in turn from Kamalsingh is also a forged. The complainant when questioned about the deception played by accused, they agreed to repay the amount with interest at 24% per annum and damages of Rs.10 lakhs on 15.11.2009. Thereafter they did not come forward to repay thereby the accused cheated with conspiracy.

4. The police final report from the investigation in the form of charge sheet shows almost repetition of the above in saying the statements of LW.1 to 5 reveals that A.1 to A.3 created forged documents for wrongful gain, A.4 & A.5 acted as

attestors to the forged documents. It is observed that A.1 to A.6 of the charge sheet made liable.

5. The quash petitioners are T.Bhagavananda Reddy and D.Krishna Reddy respectively who are A.1 & A.3 of the charge sheet and A.2 & A.4 of the private complaint referred to police in registration as FIR.

6. The averments in the complaint and the averments in the charge sheet show that the so called agreements said to have been obtained by A.3 from Kamal Singh Baid and in turn stated entered with A.2 for A.2 with complainant for same extent and A.1 said to have been obtained from the ryots originally are forged once which revealed from the enquiry of the complainant. No doubt in the charge sheet among LWs.1 to 8 supra, LW.3 is said Kamal Singh Baid to say he never executed any document to A.3 for A.3, A.2 allegedly pretended to the complainant of they obtained to sell. Once such is the case, there is material to say prima facie accusation to the offence of cheating and using as genuine a forged document. Whether the case ultimately stands or not, whether the signatures are forged or not, not even established in forensic evidence are premature for the Court to consider from the contentions raised in the quash petition though not specifically from the submissions in the course of hearing.

7. So far as the offence under Section 465 IPC which defines forgery and Sections 467 & 468 IPC forgery of valuable security or document concerned, it is not clear as to who forged

whose signature and even what LW.3-Kamal Singh Baid stated not executed in favour of A.3 any agreement for A.2 who entered with complainant for portion of land as prospective vendee from A.3 by A.2 it no where shows it was forged by A.3 or A.2 or some other to which they are privy but for showing used as genuine as if the so called forged document thereby there are no offences under Sections 465, 467 & 468 IPC that attracts.

8. Coming to the Section 423 IPC, it is a pre-requisite of dishonest or fraudulent execution of deed of transfer containing false statement of consideration. It is not the case of the complainant that there is any false statement of consideration thereby Section 423 IPC has no application.

9. Having regard to the above, without prejudice to the contest on the offence under Sections 420 & 471 IPC with which there is accusation. The cognizance order for rest of the offences punishable under Sections 423, 465, 467 & 468 IPC no way made out.

10. Accordingly and in the result, this Criminal Petition is partly allowed. All defences of the accused in relation to the offences under Sections 420 & 471 IPC are left open.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.12.2018
ska