

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.1299 of 2018

ORDER:

The petitioners are A1 & A2 in C.C.No.890 of 2017 on the file of the learned VI Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, which is outcome of Crime No.199 of 2017 of Langer House Police Station, Hyderabad, dated 10.06.2017 mentioned punishable for the offences under Sections 447, 448, 324, 341, 427, 506 r/w 34 IPC as stated in the private complaint dated 10.05.2017 in S.R.No.1125 of 2017 of the *de facto* complainant that was referred to police for investigation on 16.05.2017 in registration of the crime by Langer House Police, Hyderabad and from the investigation filed the charge sheet.

2. LW1 is the *de facto* complainant supra by name Fareeda Begum, R/o.H.No.9-4-87/B/9, Minar Colony, Toli Chowki, Hyderabad. LW2-M.A.Mujeeb of same address no other than son of LW1, and A1 is the brother of LW1's late husband and LW2's late father, and A2 is son of A1. LW3-Syed Mohammed of Chandulal Baradari, Charminar is a Car driver. These are the witnesses examined during investigation in filing the charge sheet and the learned Magistrate taken cognizance and on service for appearance against the accused, the accused moved this Court in seeking to quash the criminal case proceedings with cognizance order right from the crime as unsustainable.

3. The sum and substance of the private complaint of the *de facto* complainant, registered as crime supra, reads from paragraph Nos.2 & 3 relevant are as follows:

“2. That the complainant’s husband was the absolute owner of a Plot of land which was purchased by her during his lifetime later on the accused No.1 forcefully got registered the same in his name without paying any consideration and this complainant was one of the witness to that transaction. The Accused No.1 using criminal force got the said plot of land in his name and the complainant undesirably became the witness to the said document as the accused threatened her with dire consequences if she refuse to become a witness. The accused No.1 later on sold part of the said plot of land to a third party making alteration in the boundaries and changed the plan with a malafide intention to get more benefit from the said purchaser. He manipulated and tampered the original layout sanctioned by the Govt. authorities.

3. That the accused No.1 and 2 are constantly harassing the complainant and threatening her with dire consequences if she refuse to give evidence in their favour in a civil suit pending on the file of civil judge at Miyapur when the complainant declared that she will speak truth and nothing but truth, then the accused No.1 criminally trespassed into her house at Langer Houz along with his son accused No.2 and their henchmen and assaulted her with hands and legs beat her mercilessly, damaged her property (household articles) and confined her in a room and threatened to kill her and her family members. The complainant received internal injuries and she was mentally shocked and panicky due to the sudden attack by the accused as such she could not approached police immediately after the incident, but later on she lodged a complaint in PS Langer Houz but the police advised her to file a detailed complaint before this Hon’ble Court and get appropriate order directing the police to investigate the matter thoroughly as such the complainant approached this Hon’ble Court with a prayer to refer this complaint to police Langer Houz for investigation and necessary action.”

4. The contentions in the quash petition are that the property undisputedly standing in the name of A1 for which what the complainant alleges is her late husband purchased in the name of A1 from the so-called force of A1 that too in her alleged presence, in his lifetime never questioned. The so-called constant harassment on the *de facto* complainant by A1 & A2 with threats and dire consequences is false. The so-called trespass by the accused persons into the house by alleged beating of her is also false so also the alleged threats to kill

or confine her in room and these are only falsely engineered in the private complaint to harass the accused persons with no basis and the police did not properly investigate, but simply filed the charge sheet mechanically without even any offence made out. It is averred that the *de facto* complainant's husband executed the Gift Settlement Deed vide registered document No.6863/1989 dated 17.06.1989 in favour of petitioner No.1 for the house bearing Municipal No.1-65 on Plot No.32 in Survey Nos.10 & 17 admeasuring 200 square yards situated at Rahmath Gulshan Colony, Gachibowli village, Seri Lingampally Mandal, Rangareddy District and subsequently he received the consideration and executed the registered Sale Deed vide document No.10717/2003 dated 29.08.2003 to which the *de facto* complainant is one of the witnesses. Petitioner No.1 already sold 54.03 square yards out of 200 square yards to third parties and one Mohammed Minhajuddin and Mohammed Arajuddin sons of Dr. Riyzazuddin filed a civil suit in O.S.No.1773 of 2015 on the file of the learned VII Additional Senior Civil Judge, Rangareddy District at L.B.Nagar, Hyderabad for cancellation of the Sale Deed executed by A1 in favour of third parties and temporary injunction applications in I.A.Nos.1226 & 1227 of 2015 were dismissed on 31.08.2016. The parents of plaintiffs in O.S.No.1773 of 2015 supra filed O.S.No.29 of 2017 before the same Court for declaration that the Rectification Deed bearing document No.9983/1991 dated 11.11.1991 is binding on the *de facto* complainant and her son and both the suits are pending and

the dispute is predominantly civil in nature added with criminal flavour falsely and liable to be quashed.

5. There is no dispute about the civil suits and dismissal of temporary injunction applications in O.S.No.1773 of 2015. Once the property is standing in the name of A1 covered by the registered Sale Deed, to which the *de facto* complainant is one of the witness that too the Sale Deed is of the year 2003 which mentions about the delivery of possession, the filing of private complaint of the alleged Sale Deed outcome of cheating or force as if still she is in possession or there was a trespass or mischief or criminal intimidation thereby not sustainable, that too there is already civil litigation pending at least in relation to part of the property and she or her son did not choose to ask for cancellation of the Sale Deed of the year 2003 much less for redelivery from the recitals showing delivery of possession.

6. In this regard in the decision of the Apex Court in **Paramjeet Batra v. State of Uttarakhand**¹ it is observed that that when the complaint discloses the civil transactions and the essential ingredients of criminal offence not clearly made out though the allegations made with criminal gesture, the High Court through the averments must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence and if so for the civil remedy available the High Court should not hesitate to quash the criminal proceedings to prevent the abuse of process.

¹ 2013 (11) SCC 673

7. In another decision of the Apex Court in **Nageshwar Prasad Singh @ Sinha v. Narayan Singh**² in Paragraph No.2 it is observed that the contract for sale covered by payment of part consideration and delivery of possession, the non-performance constitutes a civil remedy cannot be allowed to continue the criminal prosecution from predominantly a civil in nature even added criminal flavour.

8. Accordingly and in the result, this Criminal Petition is allowed and the proceedings in C.C.No.890 of 2017 on the file of the learned VI Additional Chief Metropolitan Magistrate at Nampally, Hyderabad are hereby quashed. The bail bonds of the petitioners-A1 & A2, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

10.12.2018
MVA

Dr. B. SIVA SANKARA RAO, J

² AIR 1999 SC 1480