

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.32286 OF 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to quash the proceedings in F.I.R.No.503 of 2015 on the file of Station House Officer, Chilakalaguda Police Station, Secunderabad, registered for the offences punishable under Sections 420 & 468 IPC.

The main allegation is that, the third respondent filed a private complaint on 23.06.2016 before the X Additional Chief Metropolitan Magistrate at Secunderabad, against the writ petitioner alleging that, she is the absolute owner and possessor of H.No.11-4-229/2/1, Kinai Basti, Chilkalguda, Secunderabad and the accused is related to the complainant. Taking advantage of the relationship, accused and his wife stated that they will take care of the complainant, as such they were permitted to occupy a portion in H.No.11-4-229/2/1, Kindi Basti, Chilkalguda, Secunderabad. The complainant submitted in the private complaint that the accused deliberately created a fictitious and forged agreement of sale dated 17.12.2005, as if the complainant has agreed to sell the entire premises bearing H.No.11-4-229/2/1, situated in an extent of 240 sq.yds for an amount of Rs.12,00,000/-. The third respondent also stated that she had filed O.S.No.22 of 2007 on the file of I Additional Chief Judge, City Civil Court, Secunderabad, for specific performance of an Agreement of Sale dated 17.12.2005

and she contested the suit raising a contention that the said agreement of sale is forged and fabricated one and the Court below dismissed the suit disbelieving the agreement itself.

The main contention of this petitioner is that, the allegations are false and invented to harass this petitioner for unlawful gain to bring him to the terms of the second respondent to withdraw an appeal pending against the decree and judgment in O.S.No.22 of 2007 dated 10.12.2014 passed by the I Additional Chief Judge, City Civil Court, Secunderabad. It is stated in the affidavit that the complainant suppressed the factum of filing C.C.C.A.No.28 of 2015 and therefore, the proceedings are liable to be quashed by exercising power under Article 226 of the Constitution of India.

During hearing, learned counsel for the petitioner Sri K. Chidambaram reiterated the contention raised in the affidavit, while raising a specific allegation that, no permission under Section 195 Cr.P.C was obtained to launch prosecution against this petitioner and that the private complaint is not maintainable, thereby, the proceedings in F.I.R.No.503 of 2015 on the file of Station House Officer, Chilakalaguda Police Station, Secunderabad, are liable to be quashed and prayed for quashment of the proceedings.

Whereas, learned counsel for the third respondent Sri Peri Prabhakar placed on record the judgment in O.S.No.22 of 2007 dated 10.12.2014 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, while contending that, no sanction

is required for maintenance of private complaint and placed on record the judgment of the Supreme Court in **Iqbal Singh Marwah and another v. Meenakshi Marwah and another**¹ and on the strength of the principle laid down in the above judgment, learned counsel requested to dismiss the writ petition.

It is an undisputed fact that the third respondent/complainant filed O.S.No.22 of 2007 on the file of I Additional Chief Judge, City Civil Court, Secunderabad, for grant of specific performance, which ended in dismissal by disbelieving the agreement, which is a document sued upon while observing that the agreement of sale appears to be fabricated and the signature thereon was forged. Aggrieved thereby, an appeal in C.C.C.A.No.28 of 2015 was preferred, which is the subject matter and the appeal is pending for adjudication. But, taking advantage of certain findings in the judgment in O.S.No.22 of 2007 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, a private complaint was filed by the third respondent for the offences punishable under Sections 420 & 468 IPC and the same was referred to the Station House Officer, Chilkalguda Police Station, Hyderabad, by exercising power under Section 156(3) Cr.P.C. On the strength of reference, the police registered the above crime i.e. F.I.R.No.503 of 2015 on the file of Station House Officer, Chilakalaguda Police Station, Secunderabad, for the offences punishable under Sections 420 & 468 IPC.

¹ (2005) 4 Supreme Court Cases 370

Though the petitioner raised a contention that an appeal is pending and the complaint was filed only to harass this petitioner and it is an abuse of process of law, this Court cannot decide the truth or otherwise in the allegations made in the complaint at this stage, in view of the limited scope that is conferred on this Court under Article 226 of the Constitution of India. Therefore, it is difficult to quash the proceedings by exercising power under Article 226 of the Constitution of India.

Yet, another contention raised by this Court during hearing by the learned counsel for the petitioner is that, in the absence of any permission under Section 195 Cr.P.C, the proceedings in Crime No.503 of 2015 are liable to be quashed.

Section 195 Cr.P.C deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidenced. According to it,

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),
or
- (ii) of any abetment of, attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

- (b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
- (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
- (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy Of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term 'court' means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil

jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

When the complaint is filed alleging that the document is forged, which is a finding against public servant, he is administratively subordinate and the concerned administration is alone competent to lodge the complaint. Non-compliance of it would vitiate the prosecution and all other consequential orders.

(vide **C. Muniappan and others Vs. State of Tamil Nadu**²)

A distinction was drawn between Section 195(1)(b)(ii) and other provisions, wherein, it was held that, the bar under Section 195(1)(b)(ii) would be attracted only when the offence enumerated under Section 195(1)(b)(ii) has been allegedly committed in respect to document which has been produced or given in evidence in a proceedings, in any Court during the time when the document was in custody. If such offence is committed prior to giving evidence, no

² AIR 2010 SC 3718

complaint would be necessary and private complaint would be maintainable.

In the facts of the present case, the alleged agreement dated 17.12.2005 was produced along with the plaint i.e. document sued upon and alleged forgery took place prior to production of the document before the Court. Therefore, the bar under Section 195(1)(b)(ii) has no application and a private complaint is maintainable, in view of the law declared by the Supreme Court in **Iqbal Singh Marwah and another v. Meenakshi Marwah and another** (referred supra). Therefore, the contention of the learned counsel for the petitioner that, in view of the bar under Section 195(1)(b)(ii), the proceedings cannot be continued is without any substance, since the document was produced into Court after alleged forgery and the basis for the suit is the agreement of sale, which is the document sued upon. Hence, following the principle laid down in the above judgment, the contention of the learned counsel for the petitioner is rejected.

It is an admitted fact that an appeal is pending. However, the alleged forgery of an agreement is under consideration in the appeal, if, for any reason, the civil court held that the document i.e, agreement of sale is genuine, the Criminal Court will certainly consider the findings of the Civil Court at the end of the trial. But, at this stage, it is not a bar to investigate into the crime, based on the F.I.R. issued by the police.

In view of my foregoing discussion, I find no ground to exercise extraordinary power to quash the proceedings in F.I.R.No.503 of 2015 on the file of Station House Officer, Chilakalaguda Police Station, Secunderabad, registered for the offences punishable under Sections 420 & 468 IPC. Consequently, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

Date: 11.06.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

