HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 7938 OF 2011

<u>ORDER</u>:

1. This Criminal Petition under Section 482 Cr.P.C. is filed seeking to quash the proceedings in CC.No.221 of 2011 pending adjudication on the file of learned VII Additional Chief Metropolitan Magistrate, Hyderabad.

2. The petitioners are the husband and wife and they are arrayed as Accused Nos. 1 and 2 in CC.No.221 of 2011. It is contended on behalf of the petitioners that the father of the second respondent was the owner of house bearing No.16-1-552/2, admeasuring 258 square yards, situated at Saidabad main road, Hyderabad and it was let out to the first petitioner by her father. Late Sathaiah, father of the second respondent,alleged to have executed an agreement of sale dated 22.11.1998 in respect of the subject property during his life time in favour of the second petitioner/A.2 and thereafter failed to execute the same. Therefore the second petitioner filed suit in O.S.No.741 of 2005 for specific performance on 25.04.2005, wherein the second respondent/complainant herein filed her written statement on 11.7.2005 alleging that the suit agreement of sale is forged and created one. Be that as it may, the first petitioner herein also filed suit OS.No.4618 of 2004 on the file of learned XIX Junior Civil Judge, City Civil Court, Hyderabad and the same was disposed of on 12.07.2007. Thereafter the second respondent/complainant filed RC.No.12 of 2008 on the file of learned Second Additional Rent Controller, Hyderabad, which was dismissed

by order dated 27.08.2011. Against which, the second respondent/complainant filed RA.No.128 of 2011 which was also dismissed confirming the orders in RC.No.12 of 2008. Meanwhile the first petitioner filed RC.No.381 of 2010 for deposit of rent, which was allowed. Thus there are lot of civil disputes relating to the subject property pending in various Courts between the petitioners and second respondent.

3. It is contended that the second respondent has filed criminal complaint against the petitioners and trying to convert the civil litigation into criminal offence by alleging false allegations with malafide intention to defame them (petitioners), create terror in their minds and to blackmail them.

4. It is further contended that the alleged offences punishable under Section 403, 467 and 474 IPC are not applicable as the petitioners neither dishonestly misappropriated the property nor created forgery of valuable security nor having possession of documents described under Sections 466 or 467 IPC. The subject matter of property is immovable property and not movable property, more so not a security or document as referred in Sections 466 and 467 IPC. It is further contended that it is a clear cut case of abuse of process of Court.

5. It is further contended that the second respondent/complainant executed registered sale deed in respect of the subject property in favour of third party when civil case for part performance of the contract is pending before the competent Court.

For the first time, during the cross examination, the second respondent/defacto complainant stated that she sold the subject property to third person by executing registered sale deed. The counter folio of rent receipts in general may not bearing the signature of the land lord. The land lord Sathaiah expired and in the meanwhile the value of the property is enhanced several folds and as such, the de facto complainant has created a third party interest by executing a registered sale deed in favour of the real estate broker so as to black mail and abstract more money from the petitioners.

6.POINT:

Now the point that arises for determination is,

"Whether the criminal proceedings initiated against the petitioners are liable to be quashed."

7. A perusal of the record goes to suggest that the petitioners 1 and 2 are husband and wife. The de facto complainant is none other than the daughter of late Sathaiah, who is the owner of the subject house property. When the criminal petition is pending, the second respondent, Smt. Uma, W/o Manohar Yadav died. In fact the first petitioner is the tenant of the subject schedule property which was let out to him by late Sathaiah for rent and a shop is continuing in the subject property. While so, as per the averments, late Sathaiah stated to have executed an agreement of sale in favour of the second petitioner on 22.11.1998. During the life time of late Sathaiah, he used to receive the rent proceedings and used to issue receipts therefor. The second petitioner herein filed O.S.No.741 of

2005 for specific performance of the agreement of sale wherein the second respondent herein was shown as second defendant. The said suit was dismissed on 26.12.2006 finding that the second petitioner failed to establish late Sathaiah entered into agreement of sale with her and that Ex.A.1 agreement of sale dated 22.11.1998 and Ex.A.2-Legal notice are not genuine.

8. The second respondent herein filed her written statement in O.S.No.741 of 2005 contending that the agreement of sale dated 22.11.1998 was forged. Accordingly she also made a complaint to the police which was registered as case in Crime No. 222 of 2005 on 17.5.2005 for the offences punishable under Sections 403, 467 and 474 IPC. After conducting investigation, the police filed charge sheet against the petitioners for the offence punishable under Sections 403, 467 and 474 IPC and the same was taken on file, numbered as CC.No.221 of 2011, and the same is is pending adjudication.

9. It is also not in dispute that the first petitioner filed O.S.No.4618 of 2004 for injunction restraining the second respondent from interfering with his possession. The said suit was dismissed on 12.07.2007. So also, the second respondent/complainant herein also filed RC.No.12 of 2008 on the file of the learned Second Additional Rent Controller, Hyderabad and the same was dismissed by order dated 27.08.2011. Against which, the complainant/second respondent filed RA.No.128 of 2011, which was also dismissed. Likewise, the first petitioner herein filed RC.No.

381 of 2010 for deposit of rents into the Court which was allowed. Thus, with regard to the subject property, there are several disputes between the petitioners and second respondent/complainant, Late Uma.

10. In the case of ***GOPALAKRISHNA MENON AND ANOTHER Vs. D. RAJA REDDY AND ANOTHER*** (1983 AIR 1053) it was held that Section 195(1)(b)(ii) of Cr.P.C. provides that no Court shall take cognizance of any offence described in Section 463 IPC when such offence is alleged to have been committed in respect of a document produced in a proceeding in any Court, except on the complaint in writing of that Court. Section 463 IPC in a sense defines the offence of forgery and the offence which is made punishable under Section 467 IPC is in respect of an offence described in Section 463 IPC. Once it is accepted that Section 463 defines forgery and Section 467 punishes forgery of a particular category, the provision in Section 195 (1)(b)(ii) of Cr.P.C. would immediately be attracted and on the basis that the offence punishable under Section 467 IPC is an offence described in Section 463 in the absence of a complaint by the Court the prosecution would not be maintainable.

11. In the instant case, the second respondent filed a private complaint against the petitioners for the offences punishable under Section 403, 463 and 474 IPC wherein investigation is completed and charge sheet is filed. The second petitioner herein filed O.S.No.741 of 2005 against the second respondent for specific performance, which was dismissed by the Court below on

26.12.2016 finding that the second petitioner herein failed to establish that Late Sataiah entered into an agreement of sale with her in respect of the subject property and to show that Exs.A.1 and A.11 are genuine. Further the Trial Court recorded that the expert opinion in the respect of the disputed agreement of sale Ex.A.1 cannot be acted upon, inasmuch as the signatures in the rent receipt book taken as standard were not encircled by the Court showing them as standard signatures while the expert also did not seek any clarification from the Court in regard thereto, thereby the Court below was of the view that the report cannot be said to have been issued properly and consequently it was observed not to act upon it.

12. In view of the facts and circumstances discussed hereinabove, it is clear that there are certain disputes with regard to the agreement of sale which was held not proved by the petitioners herein in O.S.No.741 of 2005 filed by them and the complaint of the second respondent therein is that her father's signature was forged. On a prolonged trail, the trial Court found the agreement of sale Ex.A.1 is not genuine. In view thereof, there is sufficient material to prosecute the petitioners herein. There is nothing in the Criminal Petition to suggest that the second respondent abused the process of Court and no prejudice is caused to the petitioners in setting the criminal law in motion.

13. Finding no merit in the Criminal Petition, the same is dismissed accordingly.

14. Miscellaneous petitions pending consideration in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 7TH FEBRUARY, 2018.
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