

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.2562 & 2571 of 2018

COMMON ORDER :

The petitioner Mr. K.Sudhama is the sole accused in C.C.Nos.508 & 509 of 2017 respectively on the file of the learned XII Additional Chief Metropolitan Magistrate at Nampally, Hyderabad. The cognizance taken was for the offences punishable under Sections 420, 468 & 471 IPC, which are outcome of Crime No.278 of 2015 in C.C. No.508 of 2017 and Crime No.279 of 2015 in C.C.No.509 of 2017 respectively dated 25.10.2017 registered by the CCS, D.D., Hyderabad. The police after investigation filed the final report by citing ten witnesses including LWs 6 to 10, who registered the crime and conducted investigation respectively and LWs 1 to 5 in C.C.No.508 of 2017 are (i) Sri Sekhar Babu, the complainant-Defence Estates Officer, A.P. Circle, Secunderabad (ii) Smt. A.Sridevi, Sub-Registrar, Bowenpally, Secunderabad (iii) Sri Yadagiri Reddy, Sub-Registrar, Marredpally, Secunderabad (iv) Sri Nathani Sunil, Deputy Tahsildar, FAC Tahsildar, Tirumalagiri, Secunderabad and (v) Sri R.Dhavuji, Deputy Director, Survey & Land Records, Hyderabad District, and similar to it among nine witnesses cited, of whom LWs 6 to 9 are the police officials, who registered the crime and investigated the case, the crime originally registered as Crime No.18 of 2015 of Bowenpally Police Station, Hyderabad [Crime No.279 of 2015 of CCS, D.D, Hyderabad] and among others LWs 1 to 5 of Crime No.278 of 2015 [C.C.No.508 of 2017] supra are self-same.

2. The statements of LWs 1 to 5 in both the cases supra reveal that as per the General Land Register prepared under Section 3(1) of the

Cantonment Land Administration Rules, 1937 in exercise of power conferred under Section 280 of the Cantonment Act, 1924, the land comprising GLR Survey No.689 admeasuring Ac.2.91 guntas and GLR Survey No.721 admeasuring Ac. 4.56 guntas are classified as B-4 (land which is not included in any other class) and placed under the management of the Defence Estates Officer, A.P. Circle, Secunderabad. The above GLR Survey Nos.689 & 721 is corresponding to Revenue Survey No.170 of Thokatta Village also recorded as Sarkari Abadi. The accused-Sudhama in September 1989 filed W.P. No.12729 of 1989 in the High Court stating that his father purchased the land through the registered Sale Deed dated 20th Aaaban 1355 Fasli from its owner Abdul Wahab through a registered document No.39, Page No.21, Book No.1, Vol. No.1 of 1355 Fasli registered in the office of the Sub-Registrar, Secunderabad and upon his father's death he became the owner. He claimed further that the Defence authorities encroached his land and sought compensation for the extent of Ac.4.00 guntas situated in Survey No.37/2 (old) corresponding to new Survey No.170/2 and GLR Survey No.689 and 721 of Thokatta Village, Secunderabad. The High Court by order dated 19.04.1991 directed the writ petitioner and the Defence Estates Officer to approach the Civil Court. After legal opinion obtained, the Defence Estates Officer filed O.S.No.266 of 1991 before the learned III Additional Judge at Secunderabad for declaration of title and recovery of possession of the land. The Court, according to the said statement relied on fake documents produced by Sudhama, dismissed the suit on 15.03.1996. Aggrieved thereby, an appeal in A.S. No.99 of 1997 was filed before the learned I Additional Judge, City Civil Court, Secunderabad, that was also ended in dismissal on 18.01.2003

relying on the irregular order passed by the former District Revenue Officer, Hyderabad District vide File No.B2/8431/1991 dated 18.12.1991. The Defence Estates Officer filed S.A. No.1145 of 2004 before the High Court that was also ended in dismissal on 15.07.2005 and subsequently a Review Miscellaneous Petition No.1980 of 2005 filed, that was allowed on 28.01.2006. Finally the Second Appeal was dismissed on 22.08.2008 (by dismissal of the review). Then, the accused filed W.P. No.13776 based on the above inputs, S.L.P. Nos.26322-26323 of 2009 and S.L.P. Nos.26811-26812 of 2010 before the Apex Court challenging the orders passed in S.A. No.1145 of 2004 and S.A.M.P. No.13213 of 2004, and the Apex Court at the time of hearing the S.L.P. on 31.03.2014 dismissed the S.L.P. on 05.11.2014 from discussion with the former Additional Solicitor General of India, who in turn advised the complainant to get the matter investigated through concerned investigation agency. Against which the review petition was filed, that was also dismissed by the Apex Court. Basing on the advice letter dated 15.11.2014 of the Additional Solicitor General of India, the complainant filed FIRs in Crime No.18 of 2015 in respect of Ac.2.91 guntas of land in GLR Survey No.689 before the Bowenpally Police Station, and Crime No.43 of 2015 in respect of Ac.4.56 guntas of land in GLR Survey No.721 (old survey No.37/2 corresponding to new Survey No.170/2) situated at Thokatta Village, Secunderabad before the Begumpet Police Station as per the respective jurisdiction. It appears the curative jurisdiction of the Apex Court also unsuccessfully invoked. As per the statements of the complainant further of simultaneous proceedings by adjudication by revenue authorities taken up and the former District Revenue Officer, Hyderabad Sri P.Suryanarayana vide Memo

No.B2/3764/89 dated 24.07.1989 rejected the application dated 05.05.1989 of K.Sudhama that there is no question of implementation of Sethwar after efflux of 43 years, but the same Officer after obtaining another application of the accused took U-turn and issued orders to incorporate the name of Sudhama in the revenue records as per the copy of Sethwar issued in 1356 Fasli for Survey No.170/2 of Thokatta Village without verifying the revenue records and its genuineness. The Commissioner of Land Revenue, A.P., Hyderabad vide reference No.BB2/104/92-1 dated 13.01.1992 stayed the operation of the order of the District Revenue Officer, Hyderabad supra and ordered for initiating disciplinary proceedings against the District Revenue Officer. The Collector & District Magistrate, Hyderabad by proceedings No.B2/3601/95 dated 22.08.2003 cancelled the orders of the District Revenue Officer, Hyderabad, after verifying the genuineness of the entry of Sethwar in respect of Survey No.170/2 admeasuring Ac.7.27 guntas and its authenticity concluded that the documents produced by Sudhama are fabricated for the following reasons:

- (a) The sub-division 170/2 was not created through any supplementary Sethwar but appears to have been created along with other Survey Nos. of the original sethwar of 1356 Fasli (1947 AD). Had there been any sub division as claimed by the Sudhama, it would have been implemented in the year 1358 Fasli itself.
- (b) It is evident from the photo copy of Map available in office of the Dy. Director, Survey & Land Records that the genuine sub divisions created at the time of initial survey in it with specific boundaries. But the Survey No.170 with vast extent of Ac.351.16 guntas is shown without any sub division number.
- (c) The sale deed copy dated 20.12.1355 fasli shows that one Sri Abdul Waheb s/o. Abdul Khader sold Ac.7.27 guntas in Sy.No.37/2 (old) to the father of Sudhama. When the aspect was checked up with the Classer Register 1352 fasli, old survey No.37/2 was comprising of Ac.3.03 guntas only and recorded in the name of Rastomji, thereby falsifies the contents of the Sale Deed.

- (d) As per the copy of registered sale dated 20.12.1355 fasli, the father of the accused purchased Ac.7.27 guntas of land in old Sy.No.37/2. It is not known as to how the Registration Department could foresee that a new sub-division Sy.No.170/2 would come into existence after 14.11.1356 fasli.
- (e) Copy of Map sketch was neither supported by a legally valid map nor was it originated from an appropriate authority nor does it have any authenticated attestation.

The land in question was Government land thereby and moreover the Record of Rights Act, 1989 has not been enforced in Hyderabad District as most of the lands in Hyderabad District were converted into non-agriculture and the Government Revenue (D.O.A. & R) Department vide Memo No.81978/DOA & R/89/1 dated 28.02.1990 exempted Hyderabad District from the operation of Record of Rights. Section 13 of the A.P. Rights in Law & Pattadar Pass Books Act, 1971 repealed the provisions of the A.P. (T.A.) Record of Rights in Land Regulation 1358 fasli (Regulation No.LVIII of 1358) as such the order passed by the District Revenue Officer has been cancelled. The Government ordered 10% cut in pension of Sri P.Suryanarayana, former District Revenue Officer, Hyderabad for the irregularities committed by him. The complainant's predecessors in office addressed a letter to the Sub-Registrar, Marredpally to furnish a certified copy of the Sale Deed document No.39. In reply, the Sub-Registrar by letter No.337/SROMP dated 06.09.2005 informed that as per their record the document No.39-1355 fasli was registered on 25th Isfindar in Book No.1 on pages 60 to 61 and the executants of the document were 1) G. Venkatamma (2) G.Parvatulu (3) G.Pandarinath and 4) G.Baburao and the purchaser's name was B.G.Narayan Swamy. The sale deed shows that the accused forged the document and filed before the III Additional Judge, City Civil Court, Secunderabad. The accused also tried to sell 3000 square

yards of land out of Ac.7.27 guntas in old Survey No.37/2 under Agreement of sale-cum-Irrevocable GPA to one Md. Basheer with forged link document No.362 page No.160 to 161 in Book No.1, Volume No.II of 1355 Fasli dated 20th Abaan on the file of Sub-Registrar, Bowenpally. But, the Sub-Registrar, Bowenpally endorsed the document with Refusal No.200/07 dated 12.10.2007 stating that the Survey number was a Government land. When information was sought for, the Sub-Registrar, Marredpally furnished the name of vendor P.Chungal Rao and vendee's name Goribee. Much correspondence has been made with the concerned departments before filing the criminal cases against the accused Sudhama for cheating the defence authorities. Hence, to prosecute.

3. Smt. A. Sridevi, Sub-Registrar, Bowenpally, Secunderabad, in this regard what the complainant stated in his statement with reference to the F.I.R. and Yadagiri Reddy (LW3), Sub-Registrar, Marredpally, Secunderabad also stated the same and for the relevancy it is necessary to reproduce, which reads as follows:

“I have been working as Sub-Registrar, Marredpally, Secunderabad since April, 2012. There was only one Sub Registrar Office, Secunderabad till 1981. There after another Sub Registrar Office at Marredpally was opened. The Sub Registrar Office at Bowenpally was opened on 1.5.1995. The records pertaining to Cantonment area prior to 1.5.1995, are available at the Sub Registrar's Office, Marredpally. Book-I consists of all Sale Deeds, Gift Deeds, Mortgage Deeds, Lease Deeds, Release Deeds related to land. Book-III consists of Wills. Book-IV consists of GPAs, Trust Deeds, Adoptions etc. Apart from the above, Index, Plan Volume, TIR (Thumb Impression Register) pertaining to the old records are maintained. Index-I consists of the names of executants / vendors and purchasers / claimants, property particulars, boundaries, extents are registered here. Plan Volume

consists of names of executants and claimants, Sketch of land. Hence as per Index-I Volume No.1 of 1355 F, document No.39 of 1355 F is a sale deed executed by 1) Smt Gandara Venkatamma W/o Gandara Muttaiah, r/o Secunderabad, 2) Sri G.Parvathulu, S/o Gandara Muttaiah, r/o Secunderabad, 3) Sri Pandarinath, S/o Gandara Muttaiah, r/o Secunderabad and 4) Sri Babu Rao S/o Gandara Muttaiah, r/o Moosakhan Street, Secunderabad in favour of Narayanaswamy Naidu (purchaser) in respect of House No.4095 situated at Moosakhan Street, Secunderabad registered on 25th Isfander, 1355 Fasli in this office, previously called as Sub Registrar Office, Secunderabad. It is copied in Book-I in pages 60 and 61, but these two pages are missing. Page Nos.19 and 20 of Book No.I Vol.I contain Registered sale deed document No.13 of 1355 fasli with the names of vendors Mohd. Abdul Karim and Khaja Mia and the names of vendees Devidhyan Bajarandal in respect of H.No.5538. Document No.362 of 1355 F as per Index particulars of our office the vendor is Chungal Rao S/o Lakshminarayana, LIC Agent, Kingsway, Secunderabad and vendee is Gorebji. Location of the property is at Plot No.30 admeasuring 85.5 sq. ft. at Ghasmandi, Secunderabad. The boundaries of the plot are North : Open space and houses bearing Nos.2584 and 2585, South : Foot path and Ghasmandi, East : Plot No.31, West : Plot No.29. It is copied in Book-I, Vol. II in pages 160 and 161, but these two pages are missing. The following documents are furnished herewith:

- 1) Plan of document No.39 of 1355 F
- 2) Index-I of document No.39 of 1355 F
- 3) Covering Lr. No.29/2016 dated 9.3.2016
- 4) Certificate of Encumbrances from 1.1.1977 to 30.4.1995 over the property of Sy.No.170/2 of Thokatta village
- 5) Attested copy of Lr. No.249/09 dated 9.12.09”

This is the sum and substance in taking cognizance right from registration of the crime in showing the prosecution case against the petitioner-accused.

4. In the present quash petition, the contentions raised are that the accused is falsely implicated for no crime committed being innocent that too when the matter is civil litigation right from O.S.No.266 of 1991 went

upto the Apex Court with finality including by S.L.P. Review and curative jurisdiction and the continuation of proceedings are nothing but abuse of process for civil litigation added with criminal flavour that cannot be continued as also held by the Apex Court in this regard in **Rajib Ranjan v. V. R. Vijay Kumar**¹ and thereby, for no material the continuation of proceedings are nothing but abuse of process and to sub-serve the ends of justice the proceedings are liable to be quashed.

5. In the counter filed by respondent No.1-Defence Estates Officer is by reiterating the prosecution case referred supra of the statements of LWs 2 to 5 and that the earlier civil litigation is outcome of some misappropriation and the Sale Deed of 1355 Fasli speaks executed by Abdul Waheb s/o. Abdul Khader as owner and possessor of land bearing Survey No.37/2 (old) corresponding to new Survey No.170/2 admeasuring Ac.7.27 guntas with land revenue assessment of Rs.10/- tried in the name of Sudhama at Thokatta Village whereas the Sale Deed is a created one and forged by the accused Sudhama only, which is before filing of the writ petition or subsequent to it in serving defence in the suit and the prosecution version is very clear about the forged document No.39 ascertained by the Defence Estates Officer from the Sub-Registrar concerned, who stated that the document No.39, Page No.21, Book No.1, Vol. No.1 of 1355 Fasli dated 20th Aaaban 1355 Fasli (1945 A.D.), the letter of Sub-Registrar, Marredpally dated 06.09.2005 that document No.39 of 1355 Fasli was not between Asha Balaiah and Abdul Wahab to indicate it was executed between different people on different survey numbers and

¹ 2015 (1) SCC 513

the sale transaction was not related to Survey No.170 or 170 part and also not in relation to the Cantonment limits.

6. In fact, even taken on the face value of said statements from the counter, the so-called document as Ex.B1 was exhibited in the civil suit in O.S.No.266 of 1991. The suit was ended in dismissal on 15.03.1996 once that document was marked and if at all it was forged is prior to the exhibiting and filing before the Court. The prosecution there from launched only in the year 2015 is nearly 19 years after the Sale Deed used in the civil proceedings and that too the civil proceedings is proceeded therewith. If at all there is any inadvertence in not drawing attention to the Sale Deed description and the civil litigation went upto the Supreme Court and if at all there is any alleged fraud by said Sudhama pursuant to so-called forged Sale deed in its use as genuineness, any civil remedy of the complainant is left open by invoking Section 44 of the Evidence Act to say when certain proceedings are vitiated by fraud, the persons who are guilty of such fraud are not entitled to take advantage of law of limitation, leave apart the judicial proceedings cannot become machinations of fraud at the end of any litigation for fraud vitiates all solemn acts.

7. However, that cannot be a ground to continue prosecution belatedly launched nearly 19 years after the Sale Deed was used in the presence of the complainant in the civil litigation. In this regard, the Apex Court in **Rajib Ranjan**'s case (supra 1) observed that the filing of complaint by the party losing in civil battle is abuse of process. In

the other expression of the Apex Court in **Sirajul v. The State of U.P.**² it is also observed that criminal proceedings can be quashed for delay in initiation of the criminal proceedings.

8. Having regard to the above, for the delay it is suffice to quash the proceedings without going into the merits.

9. Accordingly and in the result and subject to the above observations, these Criminal Petitions are allowed and the proceedings pending in C.C.Nos.508 & 509 of 2017 on the file of the learned XII Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, against the petitioner-accused are hereby quashed and the bail bonds of the petitioner, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

09.11.2018
MVA

Dr. B. SIVA SANKARA RAO, J

² 2015 (9) SCC 201