HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.13272 OF 2014

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.), is filed by the petitioners/accused Nos.1, 3 to 9, 11, 14 and 15 to quash the proceedings in C.C.518 of 2012, pending on the file of Judicial First Class Magistrate, Narsapur (for short, 'the trial Court'), for the offences punishable under Sections 120-B, 420, 463, 464, 466, 467, 468, 469, 470 and 471 of I.P.C.

2. Heard, the learned counsel for the petitioners, learned Public Prosecutor appearing for the 1st respondent-State, and Sri S.R.Sanku, learned counsel appearing for the 2nd respondent, and perused the record.

3. The 2nd respondent herein lodged a private complaint, under Section 200 of Cr.P.C., before the trial Court, alleging that A-2 executed a settlement deed on 12.03.2012 in favour of A-1 as if A-1 got the same from Ch.Venugopala Venkata Krishnaraya Sarma, settling the property in R.S. No.141/7 to an extent of Ac.0.20 cents out of Ac.0.39 cents situated at Mutyalapalli village, Mogalthur Mandal and West Godavari District; further, A-2 purchased an extent of Ac.0.51 cents out of Ac.1.04 cents in R.S. No.519/3 of Mutyalapalli village in Varithippa Panchayat of Mogalthur Mandal under possessory agreement dated 19.12.1996 and also purchased Ac.0.02 cents out of Ac.0.30 cents in R.S. No.141/7 of Mutyalapalli village by way of possessory agreement dated 19.12.1996 by paying the entire sale consideration to the father of the 2nd respondent and the same has been attested by the 2nd respondent's brother *viz.,* Sridhar Kumar. It is also averred therein that due to the disputes between the 2nd respondent and her cousin arrayed as A-7, A-7 foisted a false case and

filed Petition. Subsequently, the 2nd respondent filed a partition suit in O.S. No.92 of 2012 on the file of X Additional District Court, Narsapur, for some other properties against A-7 and others and that A-2 executed a document in favour of A-1 in collusion with A-3 to knock away the property belonging to the 2nd respondent and, thus, committed the aforesaid offences.

4. A-1 is the mother of A-2, A-3 is the husband of A-1 and father of A-2, A-4 is the attester of document No.529/12, dated 12.03.2012, A-5 is the scribe of document No.529/12 and A-6 is the Sub-Registrar of Mogalthur, who registered the document Nos.529/12, 562/12 dt.14.03.2012, document No.586 dt.17.03.2012 and document No.554 dt.14.03.2012. A-7 is the cousin of 2nd respondent and A-8 is the wife of A-7, A-9 and A-10 are the attesters of document No.562, dt.14.03.2012, A-11 is the mother of A-7 and mother-in-law of A-8, A-11 and A-12 acted as attesters of document No.586/12 dt.17.03.2012, A-13 and A-14 are the attesters of document No.554/12 dt.14.03.2012, A-15 is the V.R.O., who with the active support of A-1 to A-8 facilitated to give possession certificate in favour of A-7 without verifying the records properly and clandestinely issued above certificates as per the conspiracy hatched up by all the accused to knock away the property. Similarly, A-7 conspired with other accused in executing various registered settlement deeds to knock away the property of the 2nd respondent and finally prayed to punish the accused in accordance with law.

5. The private complaint was taken on file against the accused for various offences. The present Petition is filed on the ground that the attesters, Sub-Registrar, scribe and A-1, who obtained the settlement deed, A-3, who allegedly colluded with A-1 and A-2, are not liable for any of the offences; whereas the role played by A-1 is only obtaining of documents from A-2 and against A-3 no specific allegation is made except

alleging that he colluded with A-1 and A-2. Therefore, in the absence of any allegations in the complaint to constitute any of the offences, the prosecution cannot be proceeded and that too the attesters, scribe are not liable for punishment for any of the offences in view of the law laid down by the Apex Court in ***Mohammed Ibrahim Vs. State of Bihar***[1].

6. Learned counsel for the petitioners further submits that the alleged document was obtained in the year 1996 and the 2nd respondent along with others filed a Suit in O.S. No.92 of 2012 and as the 2nd respondent lost his claim in the suit, it attained finality by judgment dated 09.04.2018, the private complaint was filed by the 2nd respondent and that the proceedings against the petitioners cannot be continued and liable to be quashed.

7. Learned counsel for the 2nd respondent contended that when the role of A-1, A-2 and A-3 is specific, they cannot be exonerated from their criminal liability, while conceding to quash the proceedings against the accused who are the attesters, scribe and Sub-Registrars and requested to pass appropriate orders.

8. As seen from the allegations made in the complaint, A-1 is the settlee of the property under the settlement deeds, executed by A-2, who is not the party before this Court and A-2 and A-3 allegedly colluded with A-1 but there was nothing in the complaint as to how he colluded and responsible for execution of the settlement deed in favour of A-1 by A-2. Therefore, the settlee of the property has nothing to do with the dispute between the 2nd respondent and A-2 but he is only a beneficiary under the settlement deed and, therefore, A-1 cannot be proceeded for any of the offences. Similarly, in the absence of any specific role attributed to A-3,

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[1] 2009 (8) SCC 751

he is liable to be exonerated from the criminal prosecution and as such the other petitioners herein who are A-4 to A-9, A-11, A-14 and A-15 being attesters, scribe and Sub-Registrar are not responsible for the alleged offences since they only attested the documents either on receipt of acknowledgment about execution of documents from executants or witnessing the very execution of document. Therefore, the attesters, scribe and Sub-Registrar are not liable to be prosecuted for any of the offences in view of the law declared by the Apex Court in ***Mohammed Ibrahim***[1] and followed by this Court in ***Yelakala Rangarao Vs. State of Andhra Pradesh***[2] and ***Mortha Rangarao Vs. State of Andhra Pradesh***[3]. Therefore, A-4 to A-9, A-11 and A-14 and A-15, who are attesters, scribe and Sub-Registrar cannot be proceeded for any of the offences referred *supra*.

9. The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is ***State of Haryana Vs. Bhajanlal***[4], wherein the Apex Court laid down the following seven guidelines:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers

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[2] LAWS (APH) 2012-11-76
[3] LAWS (APH)-2013-9-9
[4] 1992 Supp.(1) SCC 335

under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In view of guideline Nos.3 and 4, referred supra, when the allegations made in the complaint do not disclose any of the ingredients to attract the offences referred *supra*, they do not *prima-facie* constitute the offences and, hence, the Court can exercise its inherent power to quash the proceedings against the petitioners.

11. Here, the attesters, scribe and Sub-Registrar are not liable to be prosecuted under law as held by the Apex Court in ***Mohammed Ibrahim***[1]. So far as A-1 and A-3 are concerned, A-1 is only a beneficiary under

settlement deed has nothing to do with the transaction except accepting the settlement but so far as A-3 concerned, the allegations made against him, is that he colluded with A-1 and A-2 in execution of the documents but in the absence of any specific role played by him in the entire complaint, he cannot be prosecuted for the offences.

12. In ***Pepsi Foods Limited Vs. Judicial Magistrate***[5], the Apex Court held as follows:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

13. In ***R.P. Kapur* Vs. *State of Punjab***[6], this Court laid down the following principles:

> "(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

[5] (1998) 5 SCC 749
[6] AIR 1960 SC 866

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

14. In ***(Mrs.) Dhanalakshmi Vs. R. Prasanna Kumar and others***[7], the Apex Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is *mala fide*, frivolous or vexatious. in that event there would be no justification for interference by the High Court."

15. In ***State of Karnataka Vs. L. Muniswamy and Others***[8], the Apex Court while considering scope and jurisdiction of the High Courts, under Section 482 Cr.P.C, held as under:

[7] AIR 1990 SC 494

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

16. In view of law referred above, the proceedings against the petitioners are liable to be quashed. Yet, another serious contention of learned counsel for the petitioners is that when the 2nd respondent along with others lost her suit *viz.,* O.S. No.92 of 2012 and the decree has attained finality, filing of private complaint at a belated stage for the same claim based on the same cause of action arose in the year 1996 is another strong circumstance to quash the proceedings.

17. Therefore, taking into consideration the facts and circumstances and by applying the principles laid down by the Apex Court and this Court referred *supra*, I find that this is a fit case to quash the proceedings against the petitioners/A-1, A-3 to A-9, A-11, A-14 and A-15.

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[8] AIR 1977 SC 1489

18. In the result, the Criminal Petition is allowed quashing the proceedings in C.C. No.518 of 2012 pending on the file of Judicial First Class Magistrate, Narsapur, West Godavari District, against the petitioners/A-1, A-3 to A-9, A-11, A-14 and A-15.

19. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 23.07.2018.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CRIMINAL PETITION No. 13272 OF 2014

Date. 23.07.2018

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