

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16104 OF 2014

ORDER:

This criminal petition is filed to quash the proceedings in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, against the petitioners 1 to 9, registered for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC.

The petitioners are the accused 1 to 9 and respondents 3 & 4 are the defacto complainants. The defacto complainants filed a private complaint before the III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad under Section 200 Cr.P.C for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC, alleging that, the father of the defacto complainants purchased land of an extent of Ac.64-10 gts in Sy.Nos.317, 329, 330, 332, and 333 situated in Poppalaguda Village, Rajendranagar Mandal, Ranga Reddy District, alleging that the petitioners have obtained order dated 02.06.2014 by claiming falsely on an untenable applications before Respondent No.14 therein, the Recording Authority under the Record of Rights Act with a false statement as per the application of the petitioners dated 29.05.2013 seeking amendment of the Revenue Records as per the Sanad. It is further alleged that the Petitioner No.9 herein who has been shown as A-9, abusing his position as Officer in the government, alleged to have inserted the

affidavit of Accused No.10 in the proceedings before the Tahsildar/A-14.

It is further contended that, the petitioners filed this petition under Section 482 Cr.P.C to quash the proceedings, on the ground that the allegations made in the complaint that Pathumal as sole and exclusive owner of the said lands through his General Power of Attorney holder Puranmal Agarwal had sold all the lands in Sy.No.s.317, 329, 330, 332 and 333 total admeasuring Ac.64-10 gts situated at Poppalguda village, Rajendranagar Mandal, Ranga Reddy District to the respondent nos. 3 & 4 – late A. Ramaswamy along with his brother-in-law late K. Rama Murthy on 20.06.1968 under a registered sale deed bearing Document No.763 of 1968 registered in the office of Sub-Registrar, Hyderabad West is misconceived. The mutation and the entries in the pahanis were carried-out subsequent to the execution of the sale deed on 20.06.1968 and they claimed title over the lands. The petitioners herein have admittedly filed an application with false allegations without first obtaining decree from the competent court about the rights of the accused 1 to 8 in the said survey numbers referred supra and more so, when the land in the above survey numbers was conveyed by the Sanad holder Pathumal in the year 1968 to K. Ramaswamy and K. Rama Murthy and others, claimed 50% share and incorporation of names for the property. Therefore, the allegations made in the complaint do not constitute offences, muchless, offences punishable under Sections 198, 199, 200, 417, 468, 471 and 120-B of IPC.

The main contention of the learned counsel for the petitioners is that, as per the Displaced Persons (Compensation and Rehabilitation) Act, 1954, Sanad which was issued in the name of Pathumal was for the benefit of the entire family members, as on the said date including the petitioners 1 to 8 herein as per Rule-19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.

"Special Provision for payment of compensation to Joint families—

(1) Where a claim relates to properties left by the members of an undivided Hindu family in West Pakistan thereafter referred to as the joint family) compensation shall be computed in the manner hereinafter provided in this rule.

(2) where on the 26th Sept. 1955 (hereinafter referred to as the relevant date) the joint family consisted of:--

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share,

(b) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each such share.

(3) For the purpose of calculating the number of the member of a joint family under sub-rule (2), a person who on the relevant date:-

(a) was less than 18 years of age,

(b) was a lenial descendant in the main line of another living member of joint Hindu family entitled to claim partition shall be excluded:

Provided that where a member of a joint family has died during the period commencing on the 14th August 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs namely:--

- (a) a widow or widows,
- (b) a son or sons (whatever the age of such son or sons) but no lenial ascendant in the main line, then all such heirs shall, notwithstanding anything contained in this rule, be reckoned as one member of the joint Hindu family.

For the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family on the 14th day of August, 1947 and every member of a joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after the date.

This rule lays down the mode of computation of compensation where a claim relates to a property left by members of an undivided Hindu family in West Pakistan. (vide **S. Bajaj & Ors vs Arjandas Dayaram Vachhani & Ors**¹)

Thus, the Sanad dated 09.04.1968 was issued for the benefit of entire family, including the petitioners 1 to 8 who belong to Joint family, are also entitled to 50% of the share of land covered by

¹ 1970 AIR 1226

Sanad dated 09.04.1968. To claim their share, they made an application before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal for mutation of their name by filing an affidavit for 50% share, since the properties were being looked after by the late brother of petitioner no.1 by name Pathumal till 2001 or till his death, through Power of Attorney Holder. As the Sanad was not implemented in respect of 50% share in favour of the first petitioner in the revenue records, the petitioners 1 to 8 have approached the Commissioner for Land Revenue through their Power of Attorney holder M. Dayanand to the then Government of Andhra Pradesh in the year 2008 for incorporation or mutation of the names. The Commissioner of Land Revenue vide proceedings dated 08.02.2008 had directed to take action as per the law. The first petitioner made an application on 29.05.2013 for mutation of his name to the extent of 50% share as per the Sanad dated 17.04.1968 under Section 4(1) of Andhra Pradesh Record of Rights through their Power of Attorney Holder. The matter went on so many adjournments on 17.08.2013, 24.08.2013, 31.08.2013, 07.09.2013 and the complainants/respondents represented before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal and after hearing all the parties, the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal passed orders on 02.06.2014 ordering incorporation or mutation of names of the petitioners herein, the allegation that the said order is ante-dated, the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal has passed orders implementing the Sanad dated 17.04.1968 by mutating the names of the petitioners to an extent of 50% for the land bearing

Sy.Nos.317, 329, 330, 332 and 333 is incorrect. The said order has been passed as per the provisions of the Record of Rights Act by quasi-judicial authority after due enquiry. Therefore, filing an application under Section 4(1) of the Andhra Pradesh Record of Rights before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal and obtaining an order from the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal to mutate the names of these petitioners in terms of the Sanad dated 17.04.1968 for the share of 50% land covered by Sanad. Further, the respondents 3 & 4 preferred an appeal against the said order before the Appellate Authority under Section 5(5) of the Act and the appeal is pending vide Appeal No.C/3279/2014 and the Appellate Authority passed an order directing the parties to maintain status-quo.

During pendency of the appeal referred supra, a complaint was filed before the Magistrate with false averments and that the alleged induction of affidavit in the record by Accused No.9 is false on the face of it.

The basis for claiming relief under Section 482 Cr.P.C in the present petition is that the dispute is purely civil in nature and the appeal pending under Section 5(5) of the Act and therefore, when a civil wrong is given cloak of criminal litigation, the Court can exercise its power and quash the proceedings under Section 482 Cr.P.C, since the petitioners filed their objections before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal under Section 4(1) of the Act. It is also contended that the proceedings against these petitioners before the III Additional Chief

Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, in C.C.No.2493 of 2014 is an abuse of process of the Court and prayed to quash the proceedings.

The respondents 3 & 4 filed counter and additional counter affidavits, denying material allegations, inter alia contending that, the petitioners are not entitled to claim any relief under Section 482 Cr.P.C, when the allegations in the complaint are directly pointing out the complicity of these petitioners and further contended that, this petition filed under Section 482 Cr.P.C is not maintainable since the petition does not satisfy the requirements to quash, laid down by the Supreme Court to quash. The complaint *prima facie* discloses the ingredients of offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC, thereby, the petition is liable to be dismissed on this ground alone.

When the III Additional Chief Metropolitan Magistrate, Nampally, having satisfied about availability of *prima facie* material to proceed against these petitioners, took cognizance of the same, as such it cannot be quashed at this stage when the trial has not yet commenced, since the disputed question of fact is to be decided only during trial.

The petitioner No.1/accused No. 1 i.e., Vishandas Kanwarmal Lakhwani does not find place either in the allotment letter or Sanad issued by the President of India in favour of an individual i.e., Phatumal s/o. Kanwarmal. The said allotment letter dated 19.05.1966 and Sanad dt. 17.04.1968 issued in favour of Phatumal s/o. Kanwarmal in his individual capacity does not

disclose that the said allotment is issued in favour of Phatimal in his capacity as head or representative of the joint family or HUF. The said Vishandas who on his own account lived along with his brother Phatimal from 1966-68 till the death of Phatimal on 13.04.2001, kept quiet for the last 45 years and only after the death of Phatimal with an intention to gain wrongfully, connived with petitioner No.9/accused No.9 and the accused No.10 i.e., Puranmal Agarwal and the other accused and filed an application for implementation of Sanad in favour of the petitioners 1 to 8 claiming to be co-share holders and legal heirs of Phatimal Kanwarmal, in the Revenue Records under section 4(1) of the A.P. Rights in Land and P.P.B. Act, 1971 and the rules framed there under and for passing of succession orders, before the Tahsildar, Rajendranagar Mandal, fully knowing that the same is not maintainable without the petitioners 1 to 8 first acquiring by succession, survivorship, inheritance, partition, government patta, decree of a court or otherwise any right as owners of the subject land. This itself shows that petitioners 1 to 8 with prior intention to gain wrongfully had connived with A-9 in filing this application as true knowing that their application is false to their knowledge.

The application made by A-1 is false to the knowledge of A-1 since, A-1 without first obtaining a decree from the competent Court declaring the rights of A-1 to A-8 for the property before the revenue authorities for mutation of their names, when the rights in the property is in dispute, the petitioners cannot straightaway approach the revenue authorities and based on such affidavit, cannot get the name mutated and thus, in connivance of A-1 they

inserted the affidavit of A-10, who is 85 years old, affixing thumb impression. That too, the thumb impression was sent to the expert i.e. Truth Labs through process of the Court and it was found forged. Therefore, based on insertion of affidavit in the record, the revenue authorities passed such an order in favour of the petitioners, as such, there is *prima facie* material against these petitioners to proceed with the offences referred supra.

It is further contended that, the act or omission done by these petitioners would give rise to both civil and criminal actions and the respondents 3 & 4 are entitled to prosecute both civil and criminal proceedings against these petitioners or in any one of the forums available to them to address their grievance. But, mere pendency of appeal would not debar these petitioners from approaching the criminal court to take necessary action in accordance with law for the offences they committed. Therefore, on this ground of, pendency of appeal before the competent authority under Record of Rights Act, the criminal proceedings cannot be quashed.

It is further contended that the petitioners are disentitled to claim relief for the following reasons:

- a. The Impleading affidavit of A-10 does not contain the signature of A-10;
- b. The impleading affidavit of A-10 contains only finger impression but it does not say that it is the LTI of A-10.
- c. The impleading affidavit is required to be attested in law but the same was not attested.

- d. There was no application by A-10 seeking permission to implead.
- e. No advocate filed vakalat representing A-10 before the Tahsildar
- f. There is nothing on record to show that the impleading affidavit of A-10 was served on the contesting respondents before the Dy. Collector and Tahsildar
- g. The contesting respondents before the Dy. Collector and Tahsildar were taken by surprise when they came to know about the impleading affidavit of A-10 by only reading the order of A-14.
- h. A-14 after his transfer from the post of Tahsildar, Rajendranagar Mandal, has pre-dated the order to be one day before his transfer and the contesting respondents came to know about the order by obtaining the same by applying under RTI.
- i. A-10 has sworn in the purported impleading affidavit inserted in file No.B/1617/2013 to certain facts knowing them to be false, primarily being that A-10 as GPA of Phatumal had not executed the sale deed document No.763 of 1968 dt. 20.06.1968, so that A-1 to A-14 will gain wrongfully and cause wrongful loss to the complainants.

The above contentions are suffice to conclude prima facie that they conspired among the accused to cause wrongful loss to the respondents 3 & 4 and other co-shareholders of the complainants and to gain wrongful loss by inserting the fabricating

the evidence and those questions have to be decided only after trial in the C.C., but at this stage, the proceedings cannot be quashed. It is also contended that, as the offence took place within the jurisdictional limits of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, taking cognizance of the offence by the III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, is not in violation of any provisions of Criminal Procedure Code and the contentions of the petitioners to the contra was denied.

One of the contentions raised by respondents 3 & 4 is that, petitioners 1 to 9 are at liberty to approach the Court to adjudicate their rights, but they cannot take advantage of mutation of entries in the revenue records by incorporating their names as pattedar and that, the allegations made in the complaint clearly disclosed *prima facie* material to proceed against these petitioners for the offences mentioned supra. They also raised several other contentions with regard to criminal miscellaneous petitions in in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad for various directions. But, they are not relevant at this stage to decide the real controversy between the parties and prayed to dismiss the petition, on the ground that the allegations made in the complaint disclosed commission of offences *prima facie* and at this stage, this Court cannot quash the proceedings.

The respondents 3 & 4/complainants filed additional counter affidavit also, stating that, Crl. Petition No. 16104 of 2014 was filed by the accused 1 to 9 in CC No.2493 of 2014 for

quashing the criminal complaint No.2493 of 2014 on the file of the Hon'ble III Addl. Chief Metropolitan Magistrate at Hyderabad and Crl. petition No.5475 of 2015 was filed by the accused no.14 in CC No.2493 of 2014 for quashing the criminal complaint No.2493 of 2014 on the file of the Hon'ble III Addl. Chief Metropolitan Magistrate at Hyderabad and Crl. Petition No. 3014 of 2015 was filed by the accused 10 to 13 in CC No.2493 of 2014 for quashing the criminal complaint No.2493 of 2014 on the file of the Hon'ble III Addl. Chief Metropolitan Magistrate at Hyderabad. It is stated that in Crl. Petition No.3014 of 2015 filed by the accused No. 10 to 13 this Hon'ble Court was pleased to direct the court below to send the Left Thumb Impressions of A-10 to be compared with the Left Thumb Impression A-10 contained in the original Thumb Impression Register in respect of Doc.No.763 of 1968 while dispensing with the personal appearance of the accused No. 10 to 13 and disposed off the said Crl. Petition No.3014 of 2015 by order dated 9th April 2015. In Crl. Petition No. 16104 of 2014 filed by accused No.1 to 9 this Hon'ble Court passed the interim order of stay of proceedings as against the accused No.1 to 9 and whereas in Crl. Petition No.5475 of 2015 filed by accused No. 14 this Hon'ble Court has passed an order dispensing with the appearance of accused No. 14 in CC No.2493 of 2014. It is further stated that the respondents 1 and 2 and their other family members have succeeded to the lands covered by registered sale deed dated 20.06.1960 bearing Doc. No.763 of 1968 in the O/o. Sub-Registrar, Hyderabad west. That the accused No. 1 to 9 in C.C. No. 2493 of 2014 have in collusion with accused No. 10 to 13

in CC No.2493 of 2014 have falsely claimed for share, succession and mutation of their names over the lands covered by the said registered sale deeds. It is stated that the Dy. Collector & Tahsildar, Rajendranagar Mandal, Ranga Reddy Dist. had passed the illegal order in proceedings No.B/1617/2013 antedating the same as 02.06.2014 after his transfer, in collusion with the accused in CC No.2493/2014 exceeding his jurisdiction, without any authority and without considering the facts on record that there exists a registered sale deed Doc. No.763 of 1968 dated 02.06.2014 in favour of the complainants in the said CC and their family members and by which they have succeeded to the subject property. The Dy. Collector & Tahsildar, Rajendranagar Mandal, R.R. District conspiring with the other respondents have introduced a false case in his order dated 02.06.2014 claiming that the sale deed 20.06.1968 bearing doc. No. 763 of 1968 was fabricated and not executed by Mr. Puranmal Agarwal the General Power of Attorney of late Phatumal and in order to sustain the said illegal order have inserted the so called affidavit in the form of a certificate purported to be implead petition by the accused No.10, through which it was claimed by them that the sale deed was not executed by Mr. Puranmal Agarwal as GPA of Mr. Phathumal and sought for examination of the same by sending to the Forensic experts. It is submitted that since the accused No. 10 to 13 even though were not a party to the proceedings before the Tahsildar, the accused No. 1 to 9 & 14 got inserted an affidavit in the form of a certificate styled as implead affidavit by accused No. 10 without the accused No. 10 being represented by Advocate or without filing

the Vakalat for accused No. 10 before the Tahsildar. It is stated that the Tahsildar and the accused No.1 to 13 based their case on the impleading affidavit of A-10, wherein A-10 has stated that he has not executed the sale deed Doc. No.763 of 1968 and that his Left Thumb Impression on the said sale deed be sent for Forensic Examination. The complainant filed CrI.M.P. in said CC and the court was pleased to send the original of the Thumb Impression of Mr. Puranmal Agarwal i.e., the 10th accused in the said CC, found in the original Thumb Impression Register of Document No.763 of 1968 along with the Left Thumb Impression of Puranmal Agarwal obtained by the III Addl. Chief Metropolitan Magistrate at Hyderabad through the Advocate Commissioner assisted by an expert, for comparison of both the left thumb impressions. The expert i.e., Truth Labs have submitted their report dated 03.06.2015 opining that the Left Thumb Impression of Puranmal Agarwal the 10th accused in the said CC contained in the original Thumb Register of document No.763 of 1968 and the Left Thumb Impression of Mr. Puranmal Agarwal obtained by the III Additional Chief Metropolitan Magistrate through the Advocate Commissioner assisted by an expert are identical. A certified copy of the said report of Truth Labs submitted to the Hon'ble III Addl. Chief Metropolitan Magistrate, Hyderabad. It is stated that the accused 1 to 9 & 14 connived and conspired with A-1 to A-10 and have played fraud and tried to create a false case that the sale deed of the year 1968 was not executed by the accused No.10 and the said conspiracy is proved by the report of Truth Labs in which it is clearly made out that the 10th accused has executed the registered

sale deed dated 20.06.1968 bearing document No.763 of 1968 registered in the O/o. Sub Register, Hyderabad west. The report of the finger print experts of Truth Labs is extracted below and the same is filed as material papers.

"1. The left thumb impression of 'A10' (Puranmal Agarwal) obtained by the Advocate Commissioner in Criminal Misc. petition No. 1039/2015 marked 'S' has been compared and found identical with the left thumb impression marked 'D' of 'A10' (Puranmal) available on Page No.81 at Doc No. 763 of Thumb Impression Register Volume No.9 of Sub-Registrar, Hyderabad West."

It is stated that the above facts show that the accused No. 1 to 9 & 14 connived and conspired with the accused No. 10 to 13 to pass the illegal orders in proceedings No.B/1617/2013 and accused have committed various offences and are liable for prosecution and therefore the proceedings in CC No.2493 of 2014 on the file of the Hon'ble III Addl. Chief Metropolitan Magistrate at Hyderabad have to be allowed to be continued in the interest of justice in view of the report of the Truth Lab submitted in CC No.2493 of 2014 under the directions of this Hon'ble Court in Crl. M.P. No.3014 of 2015. For the reasons and facts submitted above it is therefore prayed to dismiss the Crl. Petition No. 16104 of 2014.

It is also contended that the other accused nos. 10 to 13 also filed criminal petition which was disposed of with a specific observation by this Court that, in view of the order passed by this

Court, the petitioners are not entitled to claim any relief in the present petition.

During hearing, learned counsel for the petitioner Sri E. Madan Mohan Rao reiterated the contentions, while placing reliance on the judgment of the Supreme Court in **Chandrapal Singh and others v. Maharaj Singh and another²** and **Rajib Ranjan and others v. R. Vijaykumar³** to contend that, filing of false affidavit before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal would not attract offence punishable under Section 193 & Section 195 (1)(b)(i) IPC and that, when the complaint was lodged as an abuse of process of law converting civil case into criminal proceedings, the Court can exercise power under Section 482 Cr.P.C, and requested this Court to quash the proceedings against these petitioners in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC.

Whereas, learned counsel for the respondents 3 & 4 Sri N. Subba Rao contended that, filing of an affidavit without signature and attestation before the Tahsildar to claim 50% of the share in the property covered by Sanad and mutation of the names in the file by A-9 being a Public Officer is an offence and though the dispute is pending before the Appellate Authority under Section 5(5) of the Act, the petitioners are entitled to approach either civil or criminal court and merely because an appeal is

² AIR 1982 SUPREME COURT 1238

³ (2015) 1 Supreme Court Cases 513

pending, the proceedings against these petitioners cannot be quashed. Learned counsel placed reliance on the judgment of the Supreme Court in **Vijayander Kumar and others v. State of Rajasthan and others**⁴, wherein, the Full Bench of the Supreme Court while dealing with quashment of criminal proceedings, held that, a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to informant/complainant that itself cannot be a ground to quash a criminal proceeding. The Apex Court further held that the real test is whether allegations in complaint disclose a criminal offence or not.

Based on the principle laid down in the above judgment, learned counsel for the respondents 1 & 2 contended that, approaching the criminal court by filing a private complaint is not an illegality and merely because a civil remedy is available, the respondents 1 & 2 cannot be precluded from prosecuting criminal proceedings, when the allegations made in the complaint disclosed commission of criminal offence *prima facie*, accepting the allegations on its face value as true and prayed to dismiss the criminal petition.

Considering rival contentions, perusing the material available on record, the sole point that arises for consideration is as follows:

“Whether the allegations made in the complaint, if accepted on its face value as true and correct constitutes offences punishable under Sections 198, 199, 200, 417, 468,

⁴ (2014) 3 Supreme Court Cases 389

471 and 120-B of IPC. If not, the proceedings against these petitioners are liable to be quashed by exercising power under Section 482 Cr.P.C be quashed?”

P O I N T:

Before turning to the facts and deciding the real controversy in the present case, it is apposite to discuss the scope and jurisdiction of this Court under Section 482 Cr.P.C.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal**⁵ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court

⁵ 1992 Supp. (1) SCC 335

summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 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.

Therefore, when the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

Turning to the facts of the present case, the basis for filing complaint is the application of the first petitioner dated 29.05.2013 before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal for amendment of revenue records, as per Sanad and mutate their names. A copy of the application is placed on record for perusal of this Court. The petitioners did not dispute filing of an application for mutating their names in terms of Sanad and invited an order from the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal, which is the subject matter of appeal under the provisions of the Act, through General Power of Attorney Holder. The respondents 3 & 4 keenly contested the proceedings before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal. However, on merits, the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal passed order implementing Sanad on 17.04.1968 by mutating the names of the petitioners to an extent of 50% over the land bearing Sy.Nos.317, 329, 330, 332 and 333, which is now

pending before the Appellate Authority under Section 5(5) of the Act vide Appeal No.C/3279/2014, where the Appellate Authority ordered to maintain status quo by both the parties.

In view of the admissions made by these petitioners, filing of applications and affidavit accompanied with the petition for mutation of the names of the petitioners for 50% share of property covered by Sanad and pendency of appeal, thus filing a petition and affidavit before Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal under Section 4(1) of the Act, is an undisputed question. The affidavit filed along with this petition is placed on record would go to show that the affidavit was not duly signed and attested by deponent and attesting officer. But, the Tahsildar passed the order by mutating the names of this petitioner vide proceedings No.B/1617/2013 dated 02.06.2017, where the order ran into 22 pages and the direction evidencing 50% share of land allotted through Sanad bearing No.HYD/47/4448 in favour of Sri Vishandas Kanwarmal lakshwani s/o late Kanwarmal Lakhwani and his family members is detailed as follows:

S.No	Name of the Leal Heir	Relation with Vishandas Lakhwani	Survey No.	Extent	
				Total area Acres. Guntas	Amendment sanctioned for undivided 50% share
(1)	(2)	(3)	(4)	(5)	(6)
1	Vishandas Kanwarmal Lakhwani		317	13.19	6.29
			329	13.03	6.21
2	Smt. Indira Bai	Wife	330	13.10	6.25
3	Sri Raj Kumar	Son	332	12.05	6.02
4	Sri Anil Kumar	Son	333	12.13	6.07
5	Sri Rajesh Kumar	Son			
6	Smt. Meena Bai	Daughter			
7	Smt. Sunitha Bai	Daughter			
8	Smt. Babitha Bai	Daughter			
		Total Area		64.10	32.04

As per said order, permission was accorded under Section 5(2) of A.P.R.O.R in Lands and Pattedar Passbooks Act, 1971, amended Act, 1989 for mutation of name of Sri Phathumal Kanwarmal lakhwani (died per legal heirs) S/o late Sri Kanwarmal Lakhwani to an extent of 50% undivided share and Sri Vishandas Kanwarmal Lakhwani to an extent of 50% undivided share in respect of land admeasuring 13 acres 19 guntas in Survey No.317, 13 acres 03 guntas in Sy.No.329, 13 acres 10 guntas in Sy.No.330, 12 acres 05 guntas in Sy.No.332 and 12 acres 13 guntas in Sy.No.333 of Puppalaguda Village, Rajendranagar Mandal by amending the unauthenticated and illegal entries.

Aggrieved by the order passed by the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal, an appeal is preferred in Appeal No.C/3279/2014 by R. Venkataramana and another, who are the respondents 3 & 4 herein and it is pending before the Appellate Authority in an appeal. Accepting the application and affidavit, if any filed constitutes any of the offences is a question to be determined in the present proceedings.

Since the petitioners admitted about filing of an application before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal, the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal is a Court within the definition of Court is the main issue before this Court.

Section 3 of the Evidence Act defined the word 'Court' as follows:

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.

But, in **Chandrapal Singh and others v. Maharaj Singh and another** (referred supra), the Full Bench of the Supreme Court had an occasion to consider whether filing of false affidavit before Rent Control Officer is an offence and whether Rent Controller is a Court, held that, if fake evidence in the form of affidavits filed by the appellants was given before Rent Control Officer, a civil court for the purpose of Section 193 I.P.C. "that being a judicial proceeding Section 195(1)(b)(i) would be attracted. For the purposes of Section 195(1)(b)(i) a complaint by the Court is a pre-condition for taking cognizance of such offence by any criminal court. If this pre-condition is not satisfied the Court will have no jurisdiction to take cognizance. It is also held in paragraph 14 as follows:

"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do

not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. The learned Counsel for the respondent told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C.”

In the facts of the above judgment, an affidavit was filed which is not accepted by the Additional District Judge for scrutinizing the rival affidavits, accepting the affidavit of the rival parties. But, filing a criminal complaint for the offence punishable under Section 199 IPC by the advocate, who is a party to the litigation and the Court heavily laid on such practice that it is an abuse of process of the Court and therefore, invoking jurisdiction of the Criminal Court in the background is an abuse of process of the Court and quashed the proceedings.

The present case is on a better footing than the facts of the above judgment, for the reason that, the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal vide vide proceedings No.B/1617/2013 dated 02.06.2017 accepted the application and affidavit, if any filed along with the application and passed an order directing to mutate the names of these petitioners. Therefore, it is difficult to accept that the petitioners made a false claim by submitting the application under Section 4(1) of Andhra Pradesh Record of Rights, since the Tahsildar accepted those applications claimed by the petitioners. No doubt, the order under challenge before the Appellate Authority in Appeal No.C/3279/2014 and till the appeal is decided and if any finding is recorded on the claim of the petitioners in the petition filed before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal is false and reverses the order by the Appellate Authority, the petitioners cannot be held to be *prima facie* guilty for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC.

When the quasi judicial authorities i.e. the revenue authorities accepted the affidavit and passed appropriate order, which is now under challenge before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division vide Appeal No.C/3279/2014, filing of an affidavit before the revenue authorities cannot be said to be false, in view of the order passed by the revenue authorities. Moreover, filing of such affidavit before the Revenue Authority which is not a Court directly, would

constitute offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC.

The main grievance of the learned counsel for the petitioner is that, when the civil dispute is pending since 2008 before the quasi judicial authority, filing of complaint before the criminal court which is registered as C.C.No.2493 of 2014 having prosecuted the proceedings for such a long time before the quasi judicial authorities i.e. revenue authorities is nothing but an abuse of process of the Court.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Rajib Ranjan and others v. R. Vijaykumar** (referred supra). In the facts of the above judgment, tender of respondent/complainant was rejected due to non-furnishing of necessary documents despite repeated request and also because earlier works carried out by respondent were not found satisfactory. The respondent at first made complaints, alleging irregularities to various persons, including State Government. No such irregularities were, however, found after enquiry and the respondent then filed civil suit challenging rejection of his tender but he sought to withdraw the same and suit was ultimately dismissed for non-prosecution. Then, he filed writ petition before High Court which was dismissed with costs with observation that it was abuse of process of Court. Thereafter, SLP was also dismissed by the Supreme Court and after exhaustion of these remedies, respondent filed complaint before police authorities who refused to register same on the ground that it was a civil dispute. The respondent then filed present criminal

complaint under Sections 120-B, 468, 420 and 500 IPC with allegation that appellants (public servants) along with A-1 and A-2 conspired to create false certificate which was used against respondent in rejecting his tender and the Court concluded that the allegations of fabricating records were mischievously made as afterthought, just to give colour of criminality to a civil case. Further, same were made after losing long battle in civil proceedings. hence, filing of complaint was not bonafide and amounted to misuse and abuse of process of law and quashed the proceedings.

If this principle is applied to the present facts of the case, the respondents 3 & 4 having contended the matter before the competent revenue authorities, having lost their claim, carried the matter in appeal, after long passage of time from 2008 onwards, which is now pending for adjudication would amount to abuse of process of law.

In the present facts of the case, the main allegation is that the ninth petitioner is a public servant, who colluded with the other accused and inserted document i.e. affidavit in the records. If, such affidavit is inserted in the records, at best, A-9 alone is liable to be prosecuted, but not others. However, a serious allegation is made that the petitioners colluded together is without any basis. Therefore, when the affidavit was accepted and order was passed by the revenue authorities, it is difficult to accept the contention that a false affidavit is filed before the Court to attract the offences punishable under Sections 198,199,200,417,468,471

and 120-B of IPC. Therefore, filing of complaint at this stage, after lapse of time, though appeal is pending before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division vide Appeal No.C/3279/2014 is nothing but, abuse of process of the Court and in such case, this Court can exercise power under Section 482 Cr.P.C.

Time and again, the Apex Court analyzed the power of this Court under Section 482 Cr.P.C in **Bhajan Lal's** case (referred supra). If, those principles are applied to the present facts of the case, particularly guideline no.7 of the **Bhajan Lal's** case (referred supra), 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, the Court can exercise power under Section 482 Cr.P.C. Therefore, it is manifest from the allegations made in the complaint and other material brought on record that the respondents/complainants having lost their claim before the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal, filed an appeal before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division, which is pending for adjudication, with an ulterior motive to wreck vengeance in R.O.R proceedings. Therefore, I find that it is a fit case to quash the proceedings on this ground alone.

Learned counsel for the respondent contended that, when two remedies are available i.e. civil and criminal and a given set of facts may make out a civil wrong as also a criminal offence and

only because a civil remedy may also be available to informant/complainant, that itself cannot be a ground to quash a criminal proceeding and placed reliance on the judgment of the Apex Court in **Vijayander Kumar and others v. State of Rajasthan and others** (referred supra).

If, this principle is applied to the present facts of the case, the respondents 3 & 4 are entitled to prosecute the petitioners for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC, as the dispute between the parties would also give rise to criminal offence. In the same judgment, the Supreme Court observed that real test is whether allegations in complaint disclose a criminal offence or not, to exercise power under Section 482 Cr.P.C. In the present facts of the case, the dispute is with regard to mutation of names of the petitioners 1 to 8, which is already decided by the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal against the respondents 3 & 4/complainants and in favour of the petitioners 1 to 8. Since 2008 onwards, an appeal is pending before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division vide Appeal No.C/3279/2014. Having accepted that it is a matter of civil nature and prosecuting the appeals before the competent authority, suddenly, an idea sprung up in the mind of the respondents 3 & 4 and lodged a report with the police after lapse of six years, that too after the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal passed the order. Initially, the respondents 3 & 4/complainants were not having any idea to lodge

a criminal complaint, but after lapse of six years from the date of order, the respondents 3 & 4 filed such report with the police and initiated criminal proceedings. Therefore, the allegations made in the complaint, even if they are accepted on the face value, those allegations would constitute offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC. If, for any reason, any finding is recorded in quash proceedings, it will have its own impact on the proceedings pending before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division in appeal, against the order passed by the Tahsildar-cum-Deputy Collector, Rajendra Nagar Mandal. Therefore, at this stage, it is difficult to accept the contention of the learned counsel for the respondents 3 & 4.

In “**Chandran Ratnaswami v. K.C.Palanisamy**” (referred supra), the Apex Court had an occasion to deal with doctrine of abuse of process of Court and held that “the doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court.” Lord Morris in the case of “**Connelly v. Director of Public Prosecutions**”⁶ observed:

"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to

⁶ (1964) 2 All ER 401 (HL)

suppress any abuse of its process and to defeat any attempted thwarting of its process"

"The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice."

In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

In "**Hui Chi-Ming v. The Queen**⁷", the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

The Apex Court in "**State of Karnataka v. L. Muniswamy**⁸" observed that the wholesome power under Section 482 Code of Criminal Procedure entitles the High Court to quash a proceeding when 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 High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere

⁷ (1992) 1 AC 34 (PC)

⁸ (1977) 2 SCC 699

law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703 of SCC):

“7..... 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.”

Even in “**Gian Singh V. State of Punjab**”⁹, a three-Judge Bench of the Apex Court held that “in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorized, and especially if, as a matter of duty, required to be done by law, it is found impossible to do

⁹ (2012) 10 SCC 303

that thing unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”

If this principle is applied to the facts of the present case, it is clear that certainly civil litigation is given cloak of criminal offence and such practice cannot be encouraged by the Court.

In the above judgments, the Supreme Court held that when a civil suit is pending on the basis of same cause of action, the respondents 3 & 4 are not entitled to prosecute the proceedings in criminal offence, giving cloak of criminal liability to the parties in a suit. If, this principle is applied to the present facts of the case, the proceedings in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, are liable to be quashed for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC.

In any view of the matter, in view of the pendency of the appeal before the revenue authorities, which is a quasi judicial authority, the respondents 3 & 4 is permitted to agitate their grievances before the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division and if, for any reason,

the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division concludes that a false affidavit is inserted by petitioner no.9, colluding with the other accused, the complainants/respondents 3 & 4 are at liberty to initiate criminal proceedings before competent court. Initiation of criminal proceedings at this stage is nothing but abuse of process of the Court.

In view of my foregoing discussion, I find that it is a fit case to quash the proceedings in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, against the petitioners 1 to 9, registered for the offences punishable under Sections 198,199,200,417,468,471 and 120-B of IPC, giving liberty to the complainants/respondents 3 & 4 to initiate appropriate proceedings, in case the Special Grade Deputy Collector & Revenue Divisional Officer, Rajendranagar Division in Appeal No.C/3279/2014 concludes that a false affidavit was inserted in the records in 2008.

In the result, the criminal petition is allowed, and the proceedings against the petitioners in C.C.No.2493 of 2014 on the file of III Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, Hyderabad, are hereby quashed.

Consequently, miscellaneous petitions if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.09.2018
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