THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.2822 of 2011

ORDER:

This Criminal Petition under Section 482 of Cr.P.C. is filed seeking to quash the proceedings in C.C.No.692 of 2010, pending on the file of Judicial First Class Magistrate at Siddipet, Medak District.

2. The contention of the petitioners is that the petitioners-A.1 & A.2 have not committed any offences much less the alleged offences. They are falsely implicated even though there is no material to make out a case against them. The respondent No.2, with a dishonest intention, filed O.S.No.19 of 2008 for partition of the entire properties, which were already partitioned as early as on 20.05.1980, which were sold to the petitioner No.1 having received the sale consideration of Rs.9,000/-. The complaint, as filed, is not maintainable in view of the earlier suit in O.S.No.19 of 2008. The dispute is entirely civil in nature and the alleged incident took place in the year 1988 and the complaint was filed in the year 2008 i.e. after twenty years of filing of the civil suit. The learned Magistrate ought not to have taken cognizance of an offence in view of the final report filed by the police dated 17.07.2008 stating the dispute as purely civil in nature. It is further contended that the further investigation conducted by the police is in partisan and biased manner. The complaint is liable to be quashed on the ground that the civil Suit in O.S.No.19 of 2008 filed by the respondent No.2 for partition of the property

was dismissed by the competent Civil Court. Further, it is contended that no offence is made out against the petitioners for the reason that the respondent No.2 himself admitted that all the revenue records are mutated in the name of the petitioners and the respondent No.2 has not taken any steps to get it rectified, if really, he believes that the petitioners have committed any fraud.

3. On the other hand, the respondent No.2-complainant contended that even assuming that there was partition of properties on 20.5.1980, the petitioners forged his thumb marks and without his consent sold away the properties by forging, cheating and fabricating the documents. Since there was no proper investigation conducted earlier, the investigation was reopened and investigated afresh and filed a charge sheet against the petitioners, which was numbered as C.C.No.692 of 2010. There is sufficient material to prosecute the petitioners.

4. Per contra, the learned Public Prosecutor contended that there is sufficient material against the petitioners to prosecute them for the alleged offences and that specific overt acts are attributed against them. Further, the petitioners sold away the property without the consent of the respondent No.2 by forging his thumb impression and also signatures by creating forged documents and consequently, manipulated the revenue records. Hence, the petition is not maintainable.

5. Now, the point that arises for determination in this petition is *whether there is any prima facie material to prosecute the petitioners*?

6. The learned Counsel for the petitioners contended that the dispute is completely civil in nature, there is no explanation for the inordinate delay of twenty years in filing the complaint and further, only to harass the petitioners, complaint was filed.

7. The petitioners-A.1 and A.2 and the complainant are the own brothers. The complainant is a retired employee. About 58 years back, he joined in police service at Hyderabad. Thereafter, he educated and brought up his younger brother namely Madhava Reddy and also put his other younger brother namely Chandram into cultivation. It is further alleged in the complaint dated:21.4.2008 that while he was in service, he allowed his brothers to use the proceeds of cultivation and after retirement when he requested his brothers to settle the property through elders, they stated that there are no properties. Upon enquiry, he came to know that the petitioners cheated him by selling the property.

8. It is further clear from the complaint that the father of the petitioners and respondent No.2 Gurappagari Anantha Reddy @ Anthaiah died in the month of August, 1961 who inherited to an extent of Ac.18.09Gts., of land various survey numbers in Alwal village and Ac.6.10Gts., in Andhe village of Mirdoddi Mandal, besides the house properties non-agricultural properties, valuables, jewellery and other movables. There is a clear allegation in the complaint and also in the charge sheet that the petitioners with the abetment of A.3 sold away Ac.3.03 cents joint property in Sy.No.809 to Beda Komaraiah, situated beside Masjid on the way to Koneru, created sale by

misrepresenting/impersonating themselves as owners by collecting huge amounts from the purchasers-witnesses 2 and 3 and some others for their wrongful gains while causing wrongful loss by fraudulent ways to the complainant and the alleged A.3 acted as mediator with A.1 and A.2 for furtherance of their dishonest intention. Like wise, A.1 and A.2 also sold out the land in Sy.No.966, admeasuring Ac.0.13Gts and other prime lands to third parties without having any alienable rights.

In the 161 statement filed by respondent No.2 clearly admits that on 20.5.1980, before the elders of village, partitioned the land in the outskirts of Alwal in Sy.No.966, out of which, he got the share of Ac.0.13Gts. That, on 18.4.1996, A.1 sold away the said land to Varugati Bala Narsimhulu in his name vide document No.722/96 . Similarly, A.2 also sold joint property to the extent of Ac.3.03 cents on 23.3.2002 in Sy.No.809 to Beda Komaraiah, S/o Somanna of Alwal village and registered it in his name vide document No.299/02 by impersonating the respondent No.2.

9. It is the further assertion that the alleged incident of sale took place in the year 1988 and the complaint was filed on 21.4.2008 ie., nearly after twenty years. The reason is that the respondent No.2 trusted his brothers-petitioners as he was in Hyderabad in service and only after retirement, he came to know about the alienation of properties and made a complaint on 21.4.2008. Accordingly, there is a prima facie explanation for the delay as he gave the complaint only after he got knowledge of alienations made by the petitioners at the instigation of A.3.

10. The material on record further go to show that basing on the complaint, the case in Crime No.43/2008 was registered and the police gave final report as civil in nature. In the charge sheet, there is a clarification that the ASI, Mirdoddi police station having examined six witness filed a final report on 17.7.2008 referring as civil in nature. The ASI Sri A. Brahmaiah, after taking charge of the police station and as per the instructions of the superior officer, re-opened the case on 13.1.2009 and handed over the CD file to Srinivas, Sub-Inspector of Police, Mirdoddi police station, for further investigation, who in turn handed over the file to P. Ravinder Reddy, C.I and after thorough investigation, he filed the charge sheet against the petitioners for the offences under sections 420, 406, 468, 471, 427, r/w 109, 34 IPC against A.1 and A.2 and the abettor-A3.

11. The investigating officer in the charge sheet clearly alleged that the petitioners at the abetment of A.3 knowing that the complainant-respondent No.2 is the owner of the land admeasuring Ac.1.01Gts., in Survey No.809/EE, situated beside Masjid, sold the same by misrepresenting/impersonating themselves as owners by collecting huge amounts from the purchasers and some others for their wrongful gains, without the consent of respondent No.2. Like-wise, the petitioners also sold the land to the extent of Ac.0.13Gts., in Sy.No.966 and other prime lands to the third parties without having any alienable rights. Further, the prosecution also gathered prima facie material by sending the left hand thumb impression and signatures of respondent No.2-complainant and the copies of sale

deeds of joint property vide document Nos.1302/88, 1303,88, 1304/88 and 1305/88 issued by SRO, Dubbak, were sent to finger print expert for verification and report the same. The expert's report came to conclusion and submitted his report dated:6.8.2009 vide C.No.142/U4/FPB-CID/2009 stating that, "the disputed left thumb impressions marked D1, D2, D3 and D4 (which are identical with one another) are not identical with the specimen left thumb impression marked S-I of G. Balaiah-respondent No.2. The reasons for difference in the formation of patterns (the disputed left thumb impressions marked D1, D2, D3 and D4 are Elliptical type of whorls, whereas the specimen left thumb impression marked S-I is a spiral whorl pattern)."

12. Accordingly, the investigating officer opined that, as per the opinion of finger print expert and available documentary evidence, it is established that the petitioners are found responsible for selling the joint property by executing the four sale deeds without the consent of respondent No.2 dishonestly by affixing forged thumb impression said to be of the respondent No.2 and committed offences with their common intention and liable to be punished under sections 420, 406, 468, 471, 427 r/w 34 IPC while the A.3 who knowingly abetted the A1 and A2-petitioners for doing so and committed offence punishable under sections 420, 406, 468, 471, 427 r/w 34 and 109 IPC.

13. In the circumstances discussed above and the findings therein, I am of the considered view that there is a prima facie material to prosecute the petitioners. There is nothing to suggest

that the respondent No.2-complainant abused the process of the Court or caused any prejudice to the petitioners by filing the complaint.

14. In the result, the Criminal Petition is dismissed while vacating the interim stay granted on 29-3-2011.

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JUSTICE N. BALAYOGI

Dated:09-02-2018
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