

SMT JUSTICE T.RAJANI

CRIMINAL PETITION Nos.6840 AND 7048 OF 2011

COMMON ORDER:

These petitions are filed, by the petitioners, who are A1 & A2 and A3 to A5 respectively, seeking for quash of the proceedings against them in Crime No.317 of 2011 on the file of L.B.Nagar Police Station, Cyberabad District. The offences alleged are under Sections 466, 467, 477 r/w 34 and 465 IPC.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing, for the 1st respondent as well as the counsel appearing, for the 2nd respondent.

3. The facts of the case, briefly, as per the complaint, are that the complainant's mother filed suit viz., O.S.No.1854 of 2004 on the file of the court of Senior Civil Judge, Ranga Reddy District for declaration of title and for recovery of possession in respect of land admeasuring 620 square yards in Survey Nos.93/part, 94, 97, 99 and 100 situated at Kothapet village, Uppal Revenue Mandal, L.B.Nagar Municipality, R.R.District against the Commissioner, L.B.Nagar Municipality, (1st defendant) and the New Maruthi Nagar (East) Welfare Association represented by its General Secretary(2nd defendant). During the pendency of the proceedings, her mother died and plaintiffs 2 to 7, who are the legal representatives, are brought on record. During trial, the 1st defendant has produced a lay out, which was marked as Ex.B7.

4. The Court below vide judgment, dated 31.08.2010, decreed the suit in favour of the plaintiffs. In the said judgment, the court below, with regard to the said Ex.B7, gave a clear finding that the said lay out is a forged and fabricated document and that it is for the plaintiffs to proceed or not to proceed to initiate criminal proceedings before competent court of law against the persons responsible for creating and placing such false and fabricated lay out.

5. The aforesaid findings of the court below are the basis for filing the present complaint by the complainant, who is the 3rd plaintiff in the said suit. In the said suit, the court below also observed that the act of the Deputy Commissioner (1st defendant) in attesting Ex.B6, which is a copy of the lay out, is also an offence punishable under Section 197 of the Indian Penal Code, 1860.

6. Section 197 IPC can be reproduced for ready reference, which is as follows:

“197: Issuing or signing false certificate.—Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.”

7. From a reading of the above provision, it is clear that *mens rea* is an essential ingredient for the offence punishable under Section 197 IPC. Hence, unless *mens rea* can be made out, it cannot be said that mere attestation of Ex.B6 by the Deputy Commissioner, who is the 1st petitioner/A3 in

Crl.P.No.7048 of 2011, would constitute an offence under Section 197 IPC. In order to understand whether there is any *mens rea* on the part of the Deputy Commissioner, the contentions of the counsel for the petitioners can be considered.

8. According to the counsel for the petitioners, the Deputy Commissioner joined the office on 29.05.2009 and A2 joined on 27.05.2009 and the suit was filed in the year 2004. The judgment reproduced the written statement filed by the 1st defendant, Deputy Commissioner, which shows that a plea was taken that the lay out filed by the plaintiffs therein is fabricated. From the several contentions made in the written statement, one of which is that all open places shown in the lay out are vested with the defendants-Municipality, it can be understood that the contentions are based on the layout. Obviously, the written statement is drafted during the tenure of the Deputy Commissioner. Hence, it has to be understood that the contentions in the written statement of the then Deputy Commissioner, are based on the lay out which they had in their hands.

9. When specific contentions are made in the written statement with reference to the lay out, it suggests that there was a layout prepared by then itself, based on which the contentions were made. Ex.B7, which is found to be fabricated, was submitted to the court on 19.11.2009 and Ex.B6, which is the attested copy, was produced on 08.10.2009 i.e., few months

after A1 and A2 joined the office. By then, the contentions with regard to the said lay out were made in the written statement. The counsel submits that against the judgment in the above suit, an appeal was preferred viz., A.S.No.731 of 2010 before this court and the same was pending. This court by order, dated 09.03.2011, in AS MP No.1996 of 2010 in AS No.731 of 2010, granted interim orders, suspending the judgment in the above suit.

10. The said facts are not disputed. Unless a clear finding is given with regard to the fabrication and forging of the layout, it cannot be said that the lay out is fabricated, in order to defeat the rights of the respondents. The civil court seems to have considered the appearance of the lay out submitted to the court, with reference to the stapling and tag holes and considered that it was a newly prepared document. Whether the said lay out was already prepared by the time A1 and A2 assumed office or thereafter, has to be decided. As rightly contended by the petitioners' counsel, no issue was framed with regard to the fabrication of the lay out. Hence, all these aspects have to be decided in the appeal.

11. Further, except against the Deputy Commissioner, there are no findings against the other accused in the said suit. Even otherwise, they cannot be considered as persons, who would be involved in preparation of lay out. Hence, this court opines that continuation of proceedings against the petitioners would result in abuse of process of law. However,

the 2nd respondent is at liberty to file a fresh case if it is necessitated by any findings that would be given in the appeal viz., A.S.No.731 of 2010 filed against the suit in O.S.No.1854 of 2004.

12. With the above observations, the Criminal Petitions are allowed and the proceedings in Crime No.317 of 2011 on the file of L.B.Nagar Police Station, Cyberabad District, against the petitioners, are hereby quashed.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

October 1, 2018
LMV



T.RAJANI, J