

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No. 4845 of 2011

ORDER:

Heard the learned counsel for the petitioners and the respondents.

The present criminal petition is filed to quash the proceedings in C.C.No.1828 of 2007 for the offences under Sections 406 and 417 IPC, on the file of the Court of the III Additional Chief Metropolitan Magistrate, Hyderabad.

The facts of the case are that the second respondent herein who is the de facto complainant filed a private complaint under Section 200 Cr.P.C. for the offences punishable under Sections 406, 418 and 419 IPC against the petitioners on the file of the above said Court. It is the case of the second respondent that himself and his four brothers are the absolute owners and possessors of the property bearing Municipal No.7-1-386 comprising 129 square yards situated at Balkampet, Hyderabad. The above said property belongs to their father. Since the date of purchase, the second respondent along with his mother and brothers were living in the said property. The mother-in-law of the petitioner No.3 viz. Smt. L. Satyamma was the paternal aunt of the second respondent and as she was not having any shelter, she was permitted to live in the said premises. As such, they are in permissive possession. After the death of Smt.L.Satyamma, the petitioner No.3 along with the petitioners 1 and 2 are continuing in possession of the same. However, in

January, 2006, the municipal authorities in the process of road widening acquired an extent of 65 square yards. The petitioners 1 and 2 filed an affidavit before the Municipal Corporation claiming to be the owners of the property and have received Rs.80,712/-. When the said act was questioned by the second respondent and his family members, the petitioners refused to pay the amount. It is relevant that for the purpose of claiming compensation, the petitioners cheated the second respondent and his other brothers by creating some documents. In fact, a suit for partition and separate possession was also filed in O.S.No.348 of 2006 and the said suit was pending consideration. The Court below after recording the sworn statement of the 2nd respondent herein, taken cognizance of the same and numbered the case as C.C.No.1828 of 2007 for the offences under Sections 406 and 417 IPC. Aggrieved by the same, the present criminal petition is filed.

The learned counsel appearing for the petitioners would contend that the petitioners are the absolute owners and possessors of the subject property given to her paternal grand mother towards 'pasupu kunkuma' at the time of her marriage. After her death, the petitioner No.3 along with her family members are living in the property. It is also contended that originally the property was owned by the father of the second respondent and the 4th petitioner viz. K. Veeraiah @ Erraiah. The said property was acquired by him in the year 1942 and at the time of marriage of his sister Smt.L.Satyamma, it was given to her towards 'pasupu kunkuma' and from the year 1942 late Smt.L.Satyamma and her family members are in possession and enjoyment of the same. The

petitioners have not committed any offence much less the offences as alleged in the complaint. The complaint is also not maintainable as the ingredients of Sections 406 and 417 IPC are not attracted.

To substantiate his contention, the learned counsel for the petitioners relied on a decision reported in *BINOD KUMAR AND OTHERS v. STATE OF BIHAR AND ANOTHER*¹. Basing on the same, he contended that when the petitioners are in possession of the property from the period of their grand mother from 1942 onwards, the question of permissive possession may not arise as the subject property was given to late Smt. L. Satyamma towards 'pasupu kunkuma' at the time of her marriage. He also argued that when they are in possession of the property from 1942 onwards, the question of raising an objection by the second respondent only in 2006 that too when the Corporation paid the compensation for the road effected portion itself speaks volumes about the lack of bona fides in the contentions raised by the second respondent. The second respondent has resorted to initiation of criminal proceedings only to force and pressurize the petitioners to have a settlement and under the guise of the same, to claim certain amount. He also brought to the notice of this Court that the second respondent and his brothers have also filed a suit in O.S.No.348 of 2006 for partition and separate possession of the suit schedule property which include the subject property herein. The said suit, after contest was dismissed by judgment and decree dated 16.08.2010 and the same is placed on record. In the said suit, there is a specific observation

¹ (2014) 10 SCC 663

that the subject property has been given to the mother-in-law of the petitioner No.3 towards 'pasupu kunkuma'. The appeal filed against the said judgment in this Court is pending consideration. It is pertinent that the issue cropped up in the above said judgment is similar to the facts of the present case. The relevant portion in the said judgment is as under:

“Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paragraphs (13) and (14) of the Indian Oil Corporation's case (supra), it was held as under:- “13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, [pic]leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8) “It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

Per contra, the learned counsel appearing for the second respondent contended that the paternal grand mother of the second respondent viz. late L. Satyamma was living in the subject property as she was not having any house of her own. However, the petitioners misrepresented before the Corporation and

received the entire compensation that was paid for acquisition of the portion of the property affected under the road widening. In the process, they have also created some documents. Therefore, a prima facie case is made out against the petitioners and the proceedings initiated against them cannot be quashed.

To substantiate his contention, the learned counsel relied on a decision reported in *MAKALADEVI AGARWAL v. STATE OF W.B. AND OTHERS*². Basing on the said judgment, he contended that when the trial Court observed that the complainant had made out a prima facie case against the accused persons for commission of any of the criminal offences, this Court is not justified in quashing the proceedings merely on the ground that the same document was under scrutiny by it in a civil proceeding initiated by the same complainant. Therefore, the filing of a suit for partition does not come in the way of the second respondent in initiating the criminal prosecution. He relied on the following paragraph in the said judgment.

“In view of the of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under [the Code](#) of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.”

² (2002) 1 SCC 555

From the perusal of the material on record, it is revealed that in the complaint except making a bald statement that some documents are created and a suit for partition and separate possession was also filed, there is no other specific allegation so as to meet the basic ingredients of Sections 406 and 417 IPC. As far as basic ingredient of Section 405 IPC is concerned, it reads as under:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

In the case on hand, the specific case put up by the petitioners is that the subject property was given to late Smt.L. Satyamma towards ‘pasupu kunkuma’ at the time of her marriage. In the suit filed for partition and separate possession by the second respondent herein and his brothers, the same issue fell for consideration by framing the following issue:

“Whether the plaint schedule property was gifted to the mother-in-law of the second defendant towards her ‘pasupu kunkuma’?

On keen contest, the said partition suit was dismissed by judgment and decree dated 16.08.2010. In the said judgment, there is a categorical finding that the petitioner No.3 herein along with her mother-in-law and the other family members are enjoying the suit schedule property as owners and it is given to her towards ‘pasupu kunkuma’. In the light of the above said specific finding,

the allegation made by the second respondent cannot be countenanced. When the basic ingredient of entrustment of property itself is disbelieved by a competent civil Court on a full-fledged enquiry, the question of cheating may not arise. To attract the offence of cheating, there should be a deceit by any person fraudulently or dishonestly inducing the person so deceived to deliver any property to any person etc. In the case on hand, the specific assertion of the petitioners that the subject property was given to late Smt. L. Satyamma towards 'pasupu kunkuma' at the time of her marriage which was confirmed by a competent civil Court, the same cannot be doubted. On the other hand, when the petitioners are in possession of the property from the year 1942 onwards, the long silence on the part of the second respondent also indicate the lack of bona fides on his part.

In the recent times, it is relevant to notice that the parties are trying to convert a civil litigation into criminal cases so that under the guise of criminal prosecution there is every likelihood of a settlement whereunder they can coerce and pressurize the other party to come to terms. Therefore, any effort made to settle a civil dispute by resorting to file a case in criminal nature should be discouraged. In the case on hand, in the light of the pleadings and the finding given by a civil Court establishes that the second respondent is trying to convert purely a civil dispute into a criminal litigation. Therefore, this Court feels that it is a fit case where the further continuation of criminal proceedings against the petitioners would amount to abuse of process of law, apart from putting the petitioners to a lot of physical as well as mental agony to face and

to undergo the criminal prosecution. In the light of the same, the criminal proceedings initiated against the petitioners are liable to be quashed.

Accordingly, the criminal petition is hereby allowed quashing the proceedings initiated against the petitioner in C.C.No.1828 of 2007 for the offences under Sections 406 and 417 IPC, on the file of the Court of the III Additional Chief Metropolitan Magistrate, Hyderabad.

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

Date:18.04.2018
Ccm



P. KESHA VA RAO,J

HONOURABLE SRI JUSTICE P. KESHAVA RAO



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Date:18.04.2018

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