HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2322 of 2017

ORDER:

This Criminal Revision Case is filed by petitioner/A3 under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 01.05.2017 in Crl.M.P.No.2195 of 2016 in C.C.No.196 of 2016 on the file of Judicial Magistrate of first Class (Special Mobile), Nizamabad, whereby and whereunder the learned Judge dismissed the petition filed by the petitioner under Section 239 Cr.P.C. to discharge him from the case.

2) Brief facts of the case are that:

a) The SHO, I Town Police Station, Nizamabad filed charge sheet in C.C.No.196 of 2016 against A1 to A5 for the offences under Sections 417, 418 and 420 r/w 34 IPC on the allegation that petitioner/A3 entered into an agreement dated 16.11.2011 with A1 for the purchase of mulgi which is part of house bearing Nos.5-6-346 and 5-6-347 situated at Road No.1, Saraswathinagar, Nizamabad knowing that A1 and A2 already sold the said property to *de facto* complainant.

b) Aggrieved, petitioner filed Crl.M.P.No.2195 of 2016 under Section 239 Cr.P.C. to discharge him from the case stating the alleged date of agreement as mentioned in the charge sheet is not correct because he entered into an agreement of sale dated 15.07.2011 i.e. much prior to the execution of sale deed alleged to have been executed in favour of *de facto* complainant and paid part of sale consideration and *de facto* complainant also knows about the same. He submits that he filed O.S.No.175 of 2013 for specific performance of agreement of sale against A1 and subsequently *de facto* complainant and her husband were added as parties. The said suit is pending before the Senior Civil Judge, Nizamabad. Therefore, the matter is sub-judice and the question of petitioner committing the offence of cheating depends on the decision in the above suit. While so, the *de facto* complainant and her men caused damage to his mulgi. Then, petitioner filed complaint against them before the SHO, I Town PS., Nizamabad. As a counterblast to the said complaint, the present complaint has been filed against the petitioner and others with a false allegation of cheating. The learned Magistrate without considering the true facts of the case dismissed the petition.

Hence, the present Crl.R.C. at the instance of petitioner/A3.

3) Heard Sri K.B.Ramanna Dora, learned counsel representing Sri D. Raghavulu, learned counsel for petitioner and learned Additional Public Prosecutor for the State (Telangana).

4) The substance of the charge sheet is that A1 and A2 who are the owners of property i.e. House bearing Nos.5-6-346 and 5-6-347, at first sold the same to *defacto* complainant under registered sale deed dated 21.08.2012 and also executed one agreement dated 01.08.2013 that they shall handover the property in the open space by dismantling the old building existing in the said space. Thereafter, A1 and A2 colluded with A3 to A5 and created three agreements to sell in their favour as if those documents are prior to sale deed

executed in favour complainant. On the strength of those fabricated documents, A3 to A5 filed suits for specific performance against A1 and A2. In the suit filed by petitioner/A3, the *defacto* complainant and others were added as parties. Thus, all the accused cheated the *defacto* complainant to cause wrongful loss.

5) The submission of learned counsel for petitioner is that petitioner never cheated the *defacto* complainant and he was a *bona fide* purchaser of the property for value and he filed O.S.No.175 of 2013 before the file of Senior Civil Judge, Nizamabad for specific performance of the sale agreement executed by A1 in his favour and in that view of the matter, the question of his cheating the complainant or some others does not arise and the ingredients of cheating are not applicable against him. In this regard, he relied upon the decision of the Apex Court in ***Samir Sahay @ Sameer Reddy vs. State of U.P. and another***[1].

6) It is seen that the Trial Court considering the argument of learned Addl.P.P. that A1 executed agreement of sale in favour of A4 on the stamp paper dated 15.12.2011 having purchased the same from K.Bheem Rao, stamp vendor, Karimnagar but the said stamp vendor died on 04.01.2011 itself and the petitioner/A3 acted as one of the witnesses in the above said document, which would show A1 to A5 colluded and created fabricated document to cheat the complainant, dismissed the discharge application.

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[1] 2018 (1) ALD (Crl.) 118 (SC)

7) As rightly observed by trial Court, whether the sale agreements of A3 to A5 were earlier to the sale deed of *defacto* complainant or whether they were fabricated to cause wrongful loss to the complainant can be decided only after full fledged trial. As the matter stands, there is a *prima facie* material for the dishonest intention as alleged against the accused. Therefore, the trial Court was right in dismissing the petition filed by petitioner/A3. In that view, the decision in ***Samir Sahay @ Sameer Sahay***'s case(1 supra) relied upon by petitioner/A3 will not improve his case.

8) Accordingly, this Criminal Revision Case is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 13.03.2018
Murthy