

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.4927 of 2013

ORDER:

This petition is filed, seeking for quash of the proceedings against the petitioners, who are A1 and A2, in C.C.No.63 of 2013 on the file of the Court of Additional Junior Civil Judge, Ponnur, Guntur District. The offences alleged against the petitioners are under Sections 120B, 467, 471 r/w 34 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 case of the complainant is that the 1st petitioner and the complainant are brothers. Their father executed a Will in favour of their mother and later, his mother also executed a Will in favour of the petitioners herein, who are wife and husband. The said Will is a forged Will. The Will was sent to Truth Labs for examination and the report was that the thumb impression found on the Will do not match with the thumb impression of the executant of the Will on the other document, sent for comparison. The complainant alleges that the said Will was got forged by the petitioners herein.

4. The counsel for the petitioners contends that the petitioners are not the beneficiaries under the forged Will and that the beneficiary is the mother of the 1st petitioner. It is only after the death of the father that the mother executed a

registered Will, dated 03.11.2003, bequeathing various immovable properties in favour of the petitioners and her elder daughter. The Will, which was proved to be forged, is dated 10.03.2001, whereas the Will that was executed in favour of the petitioners is dated 03.11.2003. If the petitioners were the beneficiaries under the forged Will, perhaps, there would have been some basis for the complainant to file a complaint against the petitioners. When the petitioners are not the beneficiaries under the forged Will and when the beneficiary is the mother of the 1st petitioner, the allegations made by the complainant against the 1st petitioner alone, that in order to get the property in his name, he has forged the Will, in which the mother was a beneficiary, cannot be accepted.

5. The counsel for the petitioners relies on a ruling of the apex court reported in *Paramjeet Batra vs. State of Uttarakhand and others*¹, wherein it was held that a complaint disclosing civil transactions may also have a criminal texture. The High Court must see whether a dispute, which is essentially of a civil nature, is given a cloak of criminal offence. It was also held that the allegation that the forged and fabricated documents are used by the appellants can also be dealt with in the pending suit.

6. The counsel for the petitioners also relies on the apex court's judgment *Syed Askari Hadi Ali Augustine Imam and*

¹ (2013) 11 SCC 673

*another vs. State (Delhi Administration) and another*², wherein it was held that there can be simultaneous criminal and civil proceedings with regard to the charge of forgery. But in the case dealt with by the Supreme Court, the respondent is the beneficiary under the Will. But in this case, as may be observed, since the petitioners are not the direct beneficiaries of the forged Will, the allegation of forgery against them would be far fetched.

7. The counsel for the petitioners also contends that the Will was sent to a private lab and hence, the report, unless is put to cross-examination, cannot be taken as a basis to conclude that the petitioners have no role to play in the said forgery of the Will. In order to draw support to his contention, with regard to the opinion of handwriting expert, petitioners' counsel relies on *Md.Tajuddin vs. Md.Abdul Rahaman and others*³, wherein it was held that the opinion of hand writing expert is not a conclusive proof but only a piece of evidence as to the genuineness of the disputed signatures and the opinion can be taken into consideration along with other evidence produced by the parties and it is for the court normally to arrive at its own conclusion, on appreciation of entire evidence available on record. Hence, this court opines that the Will, which was not proved to be forged by these petitioners, cannot form a basis for the criminal complaint against them.

8. In view of the above, this court opines that continuation of further proceedings against the petitioners would only result in

² (2009) 5 SCC 528

³ 2008(3) ALT 454

abuse of process of law. However, the complainant is at liberty to file a similar complaint after the conclusion of the civil suit that is pending between the parties, if there is a finding therein that these petitioners had any role to play in the forgery of the said Will.

9. With the above observations, the Criminal petition is allowed and the proceedings against the petitioners, who are A1 and A2, in C.C.No.63 of 2013 on the file of the Court of Additional Junior Civil Judge, Ponnur, Guntur District, are hereby quashed.

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

August 29, 2018
LMV



T. RAJANI, J