* SMT JUSTICE T. RAJANI

+ CRIMINAL PETITION Nos.13008, 13009, 13011, 13078, 13079, 13080 and 13181 of 2011

% Dated: 01.11.2018

Gundluri Srinivas

... PETITIONER

AND

$ State of Andhra Pradesh, represented by Public Prosecutor and another

... RESPONDENTS

! Counsel for Petitioners : MR. K.B.RAMANNA DORA

^ Counsel for Respondent : PUBLIC PROSECUTOR

< GIST :

> HEAD NOTE:

? Cases referred:

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

CRIMINAL PETITION Nos.13008, 13009, 13011, 13078, 13079, 13080 and 13181 of 2011

Between:

Gundluri Srinivas

...Petitioners

and

State of Andhra Pradesh, represented by Public Prosecutor and another

...Respondents

Date of Judgment Pronounced: 01.11.2018

Submitted for Approval:

SMT JUSTICE T. RAJANI

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

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T.RAJANI, J

SMT JUSTICE T.RAJANI

CRIMINAL PETITION Nos.13008, 13009, 13011, 13078, 13079, 13080 and 13181 of 2011

COMMON ORDER:

These petitions are filed seeking for quash of the proceedings against the petitioner (who is same in all these petitions), who is A1, in C.C.Nos.1029, 1036, 1035, 1031, 1034, 1032 and 1030 of 2011 on the file of the court of XI Additional Chief Metropolitan Magistrate at Secunderabad. The offences alleged are under Sections 406, 420, 465, 468, 471 and 120-B IPC.

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

CRL.P.Nos.13008, 13009, 13011, 13079 and 13180 of 2011: -

3. The case of the petitioner in these petitions is that the father of the complainant executed a development agreement-cum-General Power of Attorney (GPA) in favour of the petitioner, who is A1, under registered document, for construction of duplex houses in the site, which was situated in Secunderbad. After getting the GPA executed, A1 did not follow the terms and conditions of the development agreement-cum-GPA and started acting against the interest of K.Nagi Reddy and others, including the complainant. A1 with mala fide intention, to enrich himself and to cause wrongful loss to the complainant, created false documents in respect of the said land and started alienating part of the land without any consent and knowledge of the

complainant. Thereafter, the complainant and others, sensing danger to their property in the hands of the petitioner, cancelled the GPA by way of cancellation deed, dated 18.08.2001. Knowing about the said cancellation, A1 to A4 conspired and with an intention to cause wrongful loss to the complainant, created a forged sale deed, dated 26.05.2003 in favour of A3, for which A2, who is the former Branch Manager of Corporation Bank, sanctioned loan amount in collusion with A1, A3 and A4, without verifying the documents and possession in respect of A1 to A3 and created forged documents. The petitioner executed the above said sale deed in the concerned sub-registrar office, purposely. When the Corporation Bank tried to put the above said property in auction, the complainant took timely action and as such his property was saved. A1 stood as guarantor to the sanctioned loan with false address of his residence. A1 to A3 conspired together and played fraud on the complainant, by creating forged and fabricated documents with dishonest intention to cause wrongful loss to the complainant and his brother.

4. These being the allegations in the complaint, the counsel for the petitioner in these petitions would submit that several disputes arose between the parties with regard to the plots, in question, which culminated into filings of suits viz., O.S.Nos.1269 and 1270 of 2000 before the court of Junior Civil Judge, West and South, Ranga Reddy District and also Land Grabbing cases. During the pendency of the above cases, the complainant cancelled the said Development Agreements-

cum-GPA. Thereby, the petitioner filed a criminal case against the complainant and others in C.C.No.456 of 2001 on the file of the court of IX Metropolitan Magistrate, Nampally, Hyderabad. Injunction was granted in the suit filed by the petitioner i.e., O.S.No.1270 of 2000 and construction was completed. Thereafter, a Memorandum of Understanding (MOU) was entered into between the parties in the year 2001 and sale deeds were executed in the years 2003-04.

5. These facts are not refuted by the counsel for the respondents. O.S.No.1389 of 2008 was filed by the 2nd respondent in Crl.P.Nos. 13008, 13009, 13011, 13079, and 13080 of 2011 against the petitioner and others seeking for declaration of the sale deed dated 26.05.2003 as null and void and to grant perpetual injunction against the 3rd defendant and the same was dismissed by judgment, dated 01.10.2016, by the court of II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. In the year 2006, the brother of the *de facto* complainant filed O.S.No.1378 of 2008, seeking for declaration of the sale deed, dated 23.09.2004, as null and void and for perpetual injunction and the same was dismissed by judgment, dated 01.10.2006, by the court of II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

6. A perusal of the said judgment shows that an MOU was entered into between the parties on 19.11.2001. There is an admission of PW1 therein, who is the plaintiff/brother of the *de facto* complainant, that before giving the said property to the

1st defendant, who is the petitioner herein, for development, they have sold plots 26 to 28 to some others and though they were having knowledge about the said alienation, they have given the said property to the 1st defendant for development. PW1 also admitted that the 1st defendant obtained permission for construction of row houses in the plots 26 to 34. He admitted that they have given assurance to the 1st defendant to resolve the dispute with the third parties and promised to cancel the sale deeds executed by them in favour of third parties. In the cross-examination, he admitted that after the cancellation of the development agreement again themselves and the 1st defendant came to an understanding and got reduced the same into writing. He further stated that his father and brother therein were aware of the said MOU and he does not know the contents of the same. He further stated that no document was executed after of the MOU. In the said judgment, it was observed that PW1 therein categorically admitted that the development agreement-cum-GPA under Ex.A10 was cancelled without informing the same to the 1st defendant. The court on the basis of the said evidence and the law on the said aspect, held that the unilateral cancellation of development agreement is bad in law and that the plaintiff and his father and brother would not get any right and title over the said property, consequent to the said cancellation. It was also held that since the unilateral cancellation of Ex.A10-registered development agreement-cum-GPA executed by the plaintiff therein by his father and brother in favour of the 1st defendant was held to be bad in law and in view of the clauses of said Ex.A10, the 1st defendant is entitled for 70% share of the constructed area and the schedule property is the part of the said constructed area.

7. The counsel for the 2nd respondent submits that an appeal was preferred against the said judgment and hence it cannot be treated as final. But even if the said judgment may not be taken as a final judgment on the issues, the facts that stand are that the cancellation of the sale deed was unilaterally done and when the cancellation of the GPA and sale agreement is not valid, the rights under the original agreement allotting 70% of the share to the petitioner would be alive and the sales made in pursuance of the said agreement cannot be termed as void. Moreover, the execution of the sale deeds by the petitioner cannot be termed as forged, as they do not deny the execution of the said sale deeds and the rights of the *de facto* complainant over the properties comprised by the said sale deeds are not upheld by the civil court.

8. All the offences are based on the plea of forgery. Forgery, as defined under section 463 IPC, should involve making of a false document. Making a false document is defined under Section 464 IPC, which runs as follows:

> "464 Making a false document. — A person is said to make a false document or false electronic record— First —Who dishonestly or fraudulently—
>
> (a) makes, signs, seals or executes a document or part of a document;
>
> (b) makes or transmits any electronic record or part of any electronic record;
>
> (c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed;

or Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration;

or Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

9. In this case, there is no act done by the petitioner which fits into the above definition. At any stretch of interpretation, the acts of the petitioner would not amount to forgery and consequently, the offences under Sections 406 and 420 IPC also do not stand as the acts of the petitioner are in pursuance of an agreement, which was upheld by the civil court, and not with an intention to cheat the *de facto* complainant.

CRLP Nos.13078 AND 13181 OF 2011: -

10. These two petitions are filed by the complainants on the same grounds. Hence, the facts mentioned in CRL.P.No.13078 of 2011 can be looked into.

11. The complainants are the third party purchasers of the property i.e., two storied building from the petitioner, which was

constructed in pursuance of the sale agreement entered into between the petitioner and the complainant in C.C.Nos.1029, 1036, 1035, 1031, 1034, 1032 and 1030 of 2011. The allegations in the complaint are that, believing the version of A1, they purchased the property and later it was seized by A2-Rajendra Prasad, who is a bank official, and that A2 filed O.A.NO.36 OF 2006 before the Debts Recovery Tribunal and the landlords also filed SAIR before the Chief Metropolitan Magistrate, Hyderabad, for recovery of possession from the complainant, while the complainants were never delivered with possession. The original landlords live there and eventually A2 failed to recover possession under the SARFAESI Act due to the pendency of O.S.No.1378 of 2006 before the court of II Additional Senior Civil Judge, RR District. It was also alleged in the said complaint that though the complainant purchased the property for Rs.25 lakhs, the sale consideration in the sale deed was shown as Rs.7 lakhs only and the loan released in favour of A1 was Rs.2,06,000/-.

12. In the aforementioned paragraphs, it was observed that by virtue of the judgments rendered in O.S.Nos.1378 and 1389 of 2006, the cancellation deed by the original owners was held to be bad in law, which restores the rights of the petitioner herein in the said land, as rightly contended by the petitioner's counsel. The failure of the complainants to pay the instalments lead the bank to file O.A.No.36 of 2006 and it has nothing to do with the petitioner. The contention is also that absolutely no loss is caused to the complainant because of the sale made by the

petitioner, which was upheld to be proper by the civil courts. The said contention has to be held as tenable, as the undisputed unilateral cancellation of sale deed does not in any way affect the rights of the petitioner in the disputed land and the bungalows sold to the complainants herein would then be under valid sale deeds, of course, subject to the result of the appeal preferred against the judgment in O.S.No.1378 of 2006.

13. Apart from that, the entire litigation seems to be a civil litigation and hence, unless competent civil courts decide the rights of the parties conclusively, it cannot be said that the petitioner committed any of the offences alleged against him.

14. Hence, in the view of the above discussion, this court opines that continuation of further proceedings against the petitioner for the offences alleged against him in the impugned CCs would only result in an abuse of process of law.

15. With the above observations, the Criminal petitions are allowed and the proceedings in C.C.Nos.1029, 1036, 1035, 1031, 1034, 1032 and 1030 of 2011 on the file of the court of XI Additional Chief Metropolitan Magistrate at Secunderabad, against the petitioner (who is one and the same in all these petitions), are hereby quashed.

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

JUSTICE T. RAJANI

November 1, 2018
LMV