

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6394 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), by the petitioner - accused No.1 viz., Putta Rama Govindu, to quash the proceedings against him in Crime/FIR No.46 of 2016 of Pedapudi Police Station, East Godavari District, Andhra Pradesh State, registered for the offences punishable under Sections 467 and 468 read with 34 of the Indian Penal Code, 1860 (for short 'IPC'), on various grounds.

2. The petitioner herein is arraigned as accused No.1 and his father as accused No.2, and whereas, respondent No.1 is the complainant in the aforesaid Crime.

3. Respondent No.1 herein filed a private complaint under Section 200 of the Code before the learned Magistrate Court against this petitioner and his father - Putta Kasi Raju for the offences punishable under Sections 463, 464, 467 and 468 IPC, alleging that:

“i) Accused No.1 is the son of accused No.2, who is husband of complainant's mother's sister. The complainant's mother's mother i.e., his maternal grandmother, by name Chintapalli Butchi Kantamma W/o Krishna Murthy is the absolute owner of an extent of Ac.1.80 cents of agricultural land, situated at Sahapuram of Pedapudi Mandal, which was gifted to her by her mother - Sattemma under a registered gift deed, dated 14.05.1954.

ii) Since the date of said gift deed, the complainant's maternal grandmother - Chintapalli Butchi Kantamma was in peaceful possession and enjoyment of the said land during her life time. The complainant's maternal

grandmother died intestate in the year 1990. Due to which, the complainant's mother and other children succeeded to the estate of Chintapalli Butchi Kantamma. After the death of Chintapalli Butchi Kantamma, her son-in-law, who is accused No.2, was managing the property and used to pay usufructs to the complainant's mother as per her share i.e., 1/3rd.

iii) For the last two years, accused No.2 stopped payment of usufructs to the mother of complainant for the above property. Two months prior to lodging the private complaint, in the presence of elders, his father and mother requested accused No.2 to pay usufruct as per their share, but accused No.2 arrogantly replied while saying that mother of complainant has no share in the property and that the above property absolutely belongs to his son - accused No.1 as Chintapalli Butchi Kantamma executed a Will, dated 01.05.1990 in favour of her husband - Krishna Murthy, who in turn settled the said property by way of Settlement Deed, dated 29.10.1996 in favour of accused No.1 - petitioner herein, and supplied Photostat copy of the Will alleged to have executed by Chintapalli Butchi Kantamma. On coming to know about the Will, the complainant and his parents enquired and came to know that no such Will was executed by Chintapalli Butchi Kantamma.

iv) The complainant sent the Photostat copy of the above Will to the Hand-writing Expert for comparison with admitted signatures of Chintapalli Butchi Kantamma, and in turn the Finger-print Expert opined that the disputed signatures marked as D1, D2 and D3 are not the signatures of the person, who wrote S1 to S4, which are standard signatures, on its comparison. Thus, the accused committed the aforesaid offences."

4. The private complaint was referred to the Police by exercising power under Section 156 (3) of the Code for investigation and filing final report.

5. On the basis of the reference, the above crime was registered for various offences referred supra, and it is pending for investigation.

6. The present Criminal Petition is filed on the ground that the petitioner - accused No.1 was aged three years by the date of alleged Will, and the question of his forging the Will, dated 01.05.1990 at the age of three years does not arise, and it is improbable to the normal circumstances, and that the allegations made in the complaint do not constitute any of the aforesaid offences, and requested to quash the proceedings against the petitioner herein in Crime No.46 of 2016 of Pedapudi Police Station.

7. During hearing, learned counsel for the petitioner, Sri S. Srinivas Reddy, while reiterating the contentions, would draw the attention of this Court to the legal notice, dated 20.07.2014 and the reply, dated 28.07.2014, and also the order in I.A. No.1 of 2013 in O.S. No.1 of 2013, passed by the learned I Additional Junior Civil Judge, Kakinada and the correspondence between the parties, there was no reference about the incident of forgery etc. Even otherwise, the petitioner, who is accused No.1 in the aforesaid Crime, was aged three years by the date of such forgery, and it is improbable to the natural circumstances, and requested to quash the proceedings.

8. Whereas, Sri C. Raghu, learned counsel for respondent No.1, contended that there are laches on the part of the petitioner as the complaint was registered in the year 2016, but approached this Court in 2018 and apart from that, the petitioner herein did not challenge the order passed by the Magistrate exercising power under Section 156 (3) of the Code, and without challenging the order, the petitioner herein is

not entitled to question the proceedings in Crime No.46 of 2016 of Pedapudi Police Station. He also further contended that investigation is in progress, and at this stage, the petitioner is not entitled to seek the relief of quashment of the proceedings in the midst of investigation, and requested to dismiss the petition.

9. As seen from the private complaint filed before the III Additional Judicial Magistrate of First Class, Kakinada, the petitioner herein – Putta Rama Govindu was aged 27 years, whereas the Will allegedly executed on 01.05.1990, and by the date of alleged forgery of the Will, the petitioner herein might be aged three years. But, in all fairness, Sri C. Raghu, learned counsel, conceded that the petitioner was aged three years by the date of forgery of Will. Thus, the contention that the Will was forged by the petitioner herein allegedly at the age of three years is absurd, and the question of fabricating or forgery of a Will by a boy at the age of three years would not arise in normal course of events.

10. The learned counsel for respondent No.1 also contended that the petitioner herein is a mastermind in creation of Will. This contention is improbable to the natural circumstances for the reason that he was not a boy, who attained the age of discretion to act as a mastermind in the forgery of Will at the age of three years.

11. The Hon'ble Supreme Court in **State of Haryana v. Bhajanlal**¹ laid down certain guidelines to exercise power under Section 482 of the Code. According to guideline No.5, "*where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused*", the Court can exercise power under Section 482 of the Code and quash the proceedings. In the present case, the absurdity or inherent improbability is, the petitioner acting as a mastermind in creation of Will, dated 01.05.1990 at the age of three years. Therefore, basing on such absurd and improbable, allegations made against the petitioner herein, he cannot be prosecuted for the aforesaid offences, and on this ground alone and by applying guideline No.5 in **Bhajanlal**¹, proceedings to prosecute against this petitioner are liable to be quashed.

12. The laches pointed out by the learned counsel for respondent No.1 i.e., waiting for two years after registration of crime and approaching this Court by way of present Criminal Petition is no ground, and accused can file a petition under Section 482 of the Code at any stage of the proceedings including stage of Calendar Case to quash the proceedings, and laches is not a ground to dismiss the petition.

13. The other contention urged before this Court is that without challenging the order passed under Section 156 (3) of the Code referring the private complaint to the Investigating Agency to investigate and fine

¹. 1992 Supp (1) SCC 335

final report, filing the present petition for quashing the proceedings in Crime is not maintainable. But, this contention is without any substance for the simple reason that the petitioner will get knowledge only when the investigation started, and even otherwise, failure to challenge the order passed by the Magistrate under Section 156 (3) of the Code is not a ground to deny the relief under Section 482 of the Code when the allegations are absurd and inherently improbable. Therefore, on this ground, the present Criminal Petition cannot be dismissed.

14. The final ground raised before this Court is that, investigation is in progress, but that would not debar the Court from exercising power under Section 482 of the Code, as the police will not get jurisdiction to investigate unless the complaint discloses the commission of a cognizable offence, and the allegations in the complaint constitute an offence *prima facie* even if the allegations are accepted as it is, in view of the judgment of the Apex Court in **State of West Bengal v. Swapan Kumar Guha**². If the principle laid down in the said decision is applied to the present facts of the case, when the allegations are absurd and inherently improbable and not disclosing the commission of any of the offences at the age of three years by the petitioner herein, the Investigating Agency will not get any jurisdiction and, therefore, the proceedings against the petitioner - accused No.1 are liable to be quashed in Crime/FIR No.46 of 2016 of Pedapudi Police Station, by exercising power under Section 482 of the Code.

². (1982) 3 SCR 121

15. In the result, Criminal Petition is allowed, and the proceedings against the petitioner - accused No.1 in Crime/FIR No.46 of 2016 of Pedapudi Police Station, East Godavari District, Andhra Pradesh State, registered for the offences punishable under Sections 467 and 468 read with 34 IPC are hereby quashed. However, this order will not preclude the Investigating Agency to proceed further in accordance with law against any other person.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition stand closed.

September 26, 2018

Mgr

Note:

Furnish C.C. of order
by 03.10.2018. (B/O.)

M.SATYANARAYANA MURTHY, J

