

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6700 of 2018

ORDER :

The petitioner is A.2 in C.C.No.211 of 2016 pending on the file of the II Additional Judicial First Class Magistrate-cum-XV Metropolitan Magistrate, Medchal, Ranga Reddy District. The learned Magistrate taken cognizance for the offences punishable under Sections 420, 423, 468 and 471 read with 120-b IPC, out come of the protest application of the *de facto* complainant, dated 09.05.2015, against the police referred report, dated 17.09.2015, by taking the sworn statement of the *de facto* complainant only with the docket order, dated 31.03.2016, in saying the complainant present. Heard, perused the protest petition, sworn statement and the documents (though no documents filed even with the sworn statement of the *de facto* complainant), *prima facie* case as if founded against A.1 to A.4 for the offences supra in ordering to issue summons from there refused to receive summons, N.B.Ws. issued subsequently.

2. In the quash petition averments, the contentions are that there is no *prima facie* accusation to register the crime on 09.05.2015 against any of the accused from the private complaint of the *de facto* complainant to refer by the Magistrate to register by the police without even any cognizable offence made out and the so-called sale transactions are long prior to 1995-1996. Whereas the private complaint filed was above 20 years later to the last sale deed of 1995

and the allegations are introduced only to create a cause if possible, including against a dead person as if alive and attacked prior to 09.05.2015. Thereby the proceedings are liable to be quashed and the learned Magistrate did not apply his mind either to the protest application averments or to the sworn statement or the earlier referred report.

3. Notice sent to the 2nd respondent returned as left, is a sufficient service.

4. Heard learned counsel for the petitioner and learned Public Prosecutor, representing the 1st respondent-State, who reiterated in support of the cognizance order of the learned Magistrate of nothing to interfere for this Court but for if at all to seek for discharge by filing application before charges to be framed and sought for dismissal.

5. A perusal of the material on record from the original private complaint without even enclosure of any police report among seven documents of the *de facto* complainant filed on 12/17.04.2015 that complainant's father R.Narayana, original assignee of the land of Ac.3.23 gts., of Sy.No.25/1 of Pet-basheerabad, which is the family property succeeded by him after death of his father and since the time of demise of his father, he along with his family members are enjoying the property with possession and the assignment was as per G.O.Ms.No.1724, dated 26.03.1959. After death of his father on

17.12.1989, the complainant and family members approached SRO of intending to alienate the property to the prospective purchasers and SRO refused to register without NOC from Government. It is further averred to the surprise and shocking of the complainant and his family members they came to know of some unauthorized persons illegally got managed to get sale deeds in their favour without their knowledge or consent and the accused brought into existence of sale deed Nos.389 of 1966, 220 of 1980, 4490 of 1995 and 690 of 1991 by colluding with each other to knock away the property and by forgery and impersonation of the signature etc., of his father. Hence, to take action.

6. The police final report after registration of the crime from the learned Magistrate referred to police, leave about the guidelines of the Apex Court in **Priyanka Srivastava V. State of U.P.**¹ and **Ramdev Food Products V. State of Gujarat**² respectively, not even complied by showing giving of police report with proof and filing of affidavit, which are the pre-requisite for referring the complaint to the police for investigation pursuant to the order of the learned Magistrate, after 17.04.2015 filing of the same, that so far as allegation of on 14.04.2015, when complainant and family members cultivating the land, all of a sudden one Gottekukkala Bangar Raju came to the land and threatened the complainant and his family members, etc., concerned, but for the *de facto* complainant and one LW.2, no other

¹ (2015)6 SCC 287

² (2015)6 SCC 439

witnesses produced despite several notices issued to the complainant to produce witnesses and documents in relation thereto of subject land to claim and thereby referred for lack of evidence no cognizable offence made out to file final report. The learned Magistrate totally ignored the factum of the police referred report is from lack of evidence and complainant did not produce any witnesses other than examined himself and one witness LW.2, a family member, and no documents even filed, simply from the so-called sworn statement of the *de facto* complainant reiterating the private complaint averments in saying as if no investigation done by the police, taken cognizance that too with the sworn statement no documents filed, only with the protest petition seven documents filed, which are not new to the original private complaint referred seven documents, that were referred to police for registration of the crime. What the learned Magistrate observed of from perusal of the protest petition, sworn statement and documents *prima facie* case made out against the accused for the offences is out come of non-application of mind, leave about no reasons for that, even that can be supplied by this Court, if at all material is there, however not in a position to supply for lack of material, more particularly all the sale deeds filed right from the private complaint and the protest petition by the complainant or sales in the name of third parties shown executed by the father of the complainant and the first sale deed is of the year 1966 and the last one is of the year 1995 and in between during 1980 and 1991 subsequent

alienations. Further more, the averment is *per se* false and baseless for the reason of alleged Gottekukkala Bangar Raju threatened and interfered from the death certificate shows Gottekukkala Bangar Raju, died on 14.08.1997 itself as per the M.R.O., Quthbullapur, who is no other than A.4, it is impossible to believe a dead person of 1997 came and obstructed and created a seen on 14.04.2015. So far as the offence under Section 471 IPC concerned, it is barred by limitation of two years long back. So far as the offence under Section 468 IPC concerned, it is not even the specific case of who forged which document among the accused, these two sections have no application. Coming to the offence under Section 420 IPC, the first document of sale is of 1966 shown executed by the father of the *de facto* complainant if at all that was alleged forged, the others are the vendees subsequent alienations to the other vendees and the forgery or fabrication if at all is in the year 1966 and if at all even taken for arguments sake on face value of the creation of the document from the inception in 1966 with deception, the filing of the private complaint on dated 12.04.2015 before the learned Magistrate on 17.04.2015, for the learned Magistrate to refer to police and police to register the crime on 09.05.2015 *per se* no way survives to sustain, for the long long delay suffice to quash the proceedings for nothing to survive.

7. Accordingly, the criminal petition is allowed by set aside the cognizance order of the learned Magistrate. The petitioner/A.2 is acquitted and the bail bonds of him, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28th November 2018.

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