

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6851 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. by A1 and A9 to quash the proceedings in C.C.No.419 of 2014 pending on the file of XI Metropolitan Magistrate-cum-Judicial Magistrate of First Class, Special Mobile Court, at L.B.Nagar, registered for the offences punishable under Sections 420, 468, 471 and 120(b) IPC.

The Deputy Collector and Tahsildar, Saroornagar Mandal, Ranga Reddy District lodged report with the police that the petitioners along with others grabbed the property of Victoria Memorial Home, Kothapet i.e. Yateem Khana, which is exclusively belongs to the Government and created certain documents by the petitioners along with others conspired together and requested to take action against the petitioners and other accused. On the strength of the written report, Crime No.659 of 2012 of Saroornagar Police Station was registered for the above referred offences and issued FIR.

On the strength of FIR, the Sub-inspector of Police, Saroornagar, took up investigation and examined as many as 22 witnesses and recorded their statements under Section 161(3) Cr.P.C. On the evidence collected during investigation concluded that the petitioners along with others conspired together, created documents to grab the land belonging to Victoria Memorial Home, Kothapet i.e. Yateem Khana, which is exclusively belongs to the Government and filed charge sheet before the Magistrate.

The petitioners/A1 and A9, who are father and son filed this petition on the ground that no allegations were made against them more particularly against the 2nd petitioner/A9 no witnesses stated in their 161(3) Cr.P.C. statements recorded by the investigating agency and in the absence of any allegations, the proceedings against the petitioners are liable to be quashed.

During hearing learned counsel for the petitioners would draw the attention of this Court to the allegations made in the charge sheet and in the confessional statements recorded by the investigating officer. In the confessional statements no specific allegation is made against the 2nd petitioner to attract the offence. Learned counsel also relied on judgment of the Apex Court in **Haricharan Kurmi and Jogiya Hajam v State of Bihar**¹ held that solely on the basis of confessional statement of co-accused, conviction cannot be sustained. On the strength of the said principle, learned counsel for the petitioner requested to quash the proceedings against the petitioners.

The facts narrated in the charge sheet discloses that the 1st petitioner claiming right over the property including Victoria Memorial Home and to claim that he allegedly created documents and conspired with his son A9/2nd petitioner and other accused. As per the allegations made in the charge sheet, the evidence collected *prima facie* establish that A13 to 25 belongs to one family and they are claiming to be the legal heirs of Nawab Zulfikar Jah Bahadur, who is said to be the son of H.E.H.Nawab Mir Osman Ali Khan Bahadur

¹ AIR 1964 SC 1184

Nizam VII. Nawab Zulfikar Jah Bahadur had two wives viz. Zubeda Begum and Mumtaz Begum. A14 is the son of Smt Zubeda Begum. In total, i.e. through two wives Nawab Zulfikar Jah Bahadur had six sons and five daughters. A1 is the associate of the deceased Nawab Mir Osman Ali Khan Bahadur and is also got good acquaintance with A14 being the eldest son of the deceased Nawab Mir Osman Ali Khan Bahadur. A1 approached A14 and informed that he has an idea of occupying the land known as V.M.Home, Kothapet, which is worth of hundreds of crores of rupees, showing it to be the property of father of A14 and showing A13 to A25 as legal heirs of the deceased. A14 contacted with his other family members and A14 to A25 have readily agreed as A1 assured that they will be benefited crores of rupees. Thereafter, A13 to A25 executed a notarized GPA in favour of A1 and his friend one Jafer Ali/A2 showing that they are the pattedars of the property in Survey No.6/1 to 6/8 of Kothapet Village, which in fact belongs to the Government. Basing on the said GPA, A1 and A1 filed W.P.No.1323 of 2009 before this Court making false claims that A13 to A25 are pattedars of the property and that false entries were made in the revenue records and that the revenue officials are not responding to their applications etc. showing the District Collector as respondent. After hearing arguments, this Court disposed of the writ petition on 13.01.2009 observing that the grievance of the petitioners is to be resolved under A.P. Rights in Land and Pattedar Pass Books Act, 1971 before the concerned local revenue officials and the District Collector is not the proper authority and grievance cannot be resolved by the District Collector etc. Having failed in their illegal acts before this Court, A1 and A2 in collusion with A13 to A25 came in contact

with A3 and A4 and after explaining entire facts, A3 and A4 have also joined hands with other accused expressing their readiness to finance the entire litigation in all aspects and prepared a plan and accordingly A13 to A25 have executed a registered GPA in favour of Vijay Kumar Pandey and Manoj Vimal. During negotiations, A3 and A4 paid Rs.10 lakhs to A14 and at the time of registration of GPA, Pandey and Manoj Vimal paid further sum of Rs.6,50,000/- @ Rs.50,000/- each to A13 to A25. A9 and A10, who are close associates of A1 and cousin of A14 respectively have signed as attesting witnesses to the registered GPA. A9 and A10 have actively involved in all the negotiations since beginning and they also conspired with other accused for the purpose of grabbing the valuable property.

Thus, the petitioner/A1 is brain behind the scheme and they conspired with A14 and other accused including the 2nd petitioner/A9 and created certain documents and this fact is supported by the statement recorded by the police during investigation.

However, learned Public Prosecutor contended that the proceedings at this stage cannot be continued since the very basis for filing charge sheet against the petitioner is the confession made by A14. But the material produced before the Court shows that the 1st petitioner is the king pin for the entire litigation and his brother – the 2nd petitioner/A9 conspired with other accused created documents. This allegation in the charge sheet, if accepted on its face value as true, it would constitute above referred offences. At the stage of deciding petition under Section 482 Cr.P.C., this Court has to look into the allegations made in the charge sheet or complaint and if

those allegations are accepted on face value as true, would constitute cognizance of offence in view of the Guideline No.3 in **State of Haryana v Bhajanlal**².

Moreover, question of accepting confessional statements recording conviction of the accused would arise only at the end of trial and the judgments relied on by learned counsel for the petitioners cannot be applied at this stage. In any view of the matter, it is clear from the material on record that the petitioners have nothing to do with the property, but created certain documents to claim right over the property worth crores of rupees. Hence, I find no ground to quash the proceedings at this stage and consequently, the criminal petition is dismissed.

Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

09.08.2018
kvrn

M.SATYANARAYANA MURTHY,J

² 1992 Supp(1) SCC 335