

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 6956 OF 2018

ORDER:

This criminal petition is filed by petitioner-accused No. 2 under Section 482 of the Code of Criminal Procedure (for short, “Cr.P.C.”) to quash the proceedings against him in C.C.No. 669 of 2016 on the file of the Court of Additional Judicial Magistrate of I Class, Kavali, SPSR Nellore District, registered for the offences punishable under Sections 120-B, 420, 406, 468, 471 read with Section 34 of IPC.

Learned counsel for the petitioner has contended that attester is not liable to be proceeded and in support of his contention, he placed reliance on the judgment of the Apex Court in “**Mohammed Ibrahim Vs. State of Bihar**”¹ and judgments of this Court rendered in “**Yelakala Rangarao Vs. State of Andhra Pradesh**”² and “**Mortha Rangarao Vs. State of Andhra Pradesh**”³

Learned Public Prosecutor (A.P.) has opposed the petition on the ground that the petitioner though attester is also liable to be prosecuted.

The role played by the petitioner as per the allegations made in the charge sheet is that he attested the document *i.e.* partnership deed dated 24.08.2009, a copy of the same is also placed on record. From a perusal of the document dated 24-08-2009, it is clear that the petitioner herein signed on the said document as 1st attester. The word “attested” is defined under Section 3 of Transfer of Property Act, 1882, and it is as follows:

¹ (2009) 8 SCC 751

² LAWS (APH)-2012-11-76

³ LAWS (APH)-2013-9-9

"*attested*", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time and no particular form of attestation shall be necessary."

Even according to the definition of attestation, attester is not required to be present at the time of execution of a document. Therefore, the role played by the attester is limited. The Apex Court in **Mohammed Ibrahim** (1st *supra*) held as follows:

".....Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner."

By applying the principle laid down in the above judgment, the proceedings against the petitioner herein are liable to be quashed. Even as per the principle laid down by this Court in **Yelakala Rangarao** (2nd *supra*) and **Mortha Rangarao** (3rd *supra*), the attester of a document is not liable to be prosecuted.

In the result, the criminal petition is allowed. The proceedings in C.C.No. 669 of 2016 on the file of the Court of Additional Judicial Magistrate of I Class, Kavali, SPSR Nellore District, against the petitioner/accused No. 2 are hereby quashed. Pending miscellaneous petitions, if any, shall stand closed in consequence.

JUSTICE M. SATYANARAYANA MURTHY

05.07.2018
JSK