

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8847 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/ A2, seeking to quash the proceedings in C.C.No.345 of 2013 on the file of the Judicial Magistrate of First Class, Kavali, where taken cognizance for the offences punishable under Sections 418, 419, 420, 423, 465, 468 r/ w 34 IPC.

2. The petitioner and the 2nd respondent herein are A2 and complainant respectively in above said C.C. A private complaint filed on 26.04.2010 before the Judicial First Magistrate of First Class, Kavali, by the de facto complainant by name, Irla Sreenadh, against two accused viz Punuru Sathyanarayana reddy and Medarametla Lakshmi @ Punuru Lakshmi W/o Sathyanarayana Reddy.

3. The averments of the private complaint in nutshell are that the complainant intended to purchase Ac.5.17 cents of land from one Punuru Vijaya Nirmala, who is the first wife of petitioner herein by name, Punuru Sathyanarayana reddy and who was living apart to him at Guntur and she received total consideration of Rs.1,71,000/- from the complainant on 07.03.2008 and executed an unregistered sale deed by affixing her photo and thumb impression and signed the same and before going for registration of sale deed at Sub-Registrar office, said P.Vijaya Nirmala told that she would take her routine daily medicine that was kept at lodge room and wait for some time and when complainant was waiting at the Sub-Registrar office, Kavali, she left and did not return till

evening and he came to know later of she left by vacating the lodge that afternoon itself and thereafter he filed O.S.No.83 of 2008 against said Vijaya Nirmala for specific performance of the contract as per the terms of the unregistered sale deed. It is averred that said Vijaya Nirmala engaged an advocate in the suit, and pending suit, she died on 14.10.2008. Later, the complainant filed an application to add A1 as legal representative of said P.Vijaya Nirmala in I.A.No.117 of 2009 and after A1 appeared, took a false plea in his counter stating that his wife P.Vijaya Nirmala is alive with the connivance of A2 by impersonating A2, as if she was originally Lakshmi as Vijaya Nirmala/A2. Then, the complainant made efforts and found that original Vijaya Nirmala after deserting A1 left for Vijayawada and secretly got married one Devarla Venkata Narayana and gave birth to a child through him and there after, her second husband came to know about her first marriage with A1, filed divorce case in O.P.No.202 of 1989 and Vijaya Nirmala also filed M.C.No.13 of 1990 before the I Additional Judicial First Class Magistrate, Mangalagiri, against her second husband supra and they got divorce and living separately. It is averred that in 1995, A1 married A2, who is daughter of one Medarametla Harinath Reddy of Gowravaram Village, Nellore District and called as Punuru Lakshmi and to that affect her name recorded in the voters list and obtained voters card and on came to know of pending suit in O.S.No.83 of 2008 supra, both accused colluded to grab the property that was already settled in the name of Vijaya Nirmala by A1 and played foul play and created a forged

and impersonated registered settlement deed dated 04.12.2008 vide document No.5070 of 2008 as if Vijaya Nirmala resettled her properties, which were already settled by A1 to her, who already died by then. It is the say there from of it is fraud of registration document and forgery by impersonation, thereby they are liable.

4. The complainant mentions the offences from the allegations as punishable under Sections 418, 419, 420, 423, 465 and 468, r/w 34 and sought for referring to police for investigation and when referred crime 94 of 2010 dated 28.07.2010 and police, after investigation, filed a final report as civil nature on 12.04.2012 vide R.No.613 of Additional Judicial First Class Magistrate Court, Kavali, dated 18.04.2012 is the referred report, which speaks the above facts and last para speaks about statements of the de facto complainant and 5 witnesses recorded and it is the lis if at all subject matter in the civil suit and purely civil nature, thereby, referred with permission of the Sub-Divisional Police Officer, Kavali as matter of civil nature.

5. It is, on protest, raised by the de facto complainant, dated 19.09.2011, which reads that the police referred Crime No.94 of 2010 as civil in nature, the endorsement of police is totally false and they never examined any witnesses shown in the complaint and won over by accused and petitioner intended to continue the prosecution of accused by filing this protest petition. Hence, to permit to proceed with trial to prosecute the accused as a private warrant case. In fact, in the protest petition, he did not give any statement before police. Pursuant to the protest petition, he did

not even speak what was the statement of him recorded by police during investigation according to the police and what is the difference to the FIR and what is the protest and on what aspects he wants to raise to impugn the investigation.

6. Before the learned Magistrate, pursuant to the protest petition, he gave his statement and repeated the facts of his private complaint supra. He also examined one Punuru Malakonda Reddy S/o P.Audi Reddy, who stated that A1 married Vijaya Nirmala of Tadepalli Village, who lived at Annavaram Village in his house and in that period, A1 settled the property fallen to his share to Vijaya Nirmala and A1 executed a registered document to that extent in the year 1996 and he is one of the attestors to it. The father of Vijaya Nirmala also attested it and within one year of settling the property, Vijaya Nirmala left the company of A1 and went to Tadepalli and in the year 2008, the complainant and Vijaya Nirmala entered into contract for sale and she received consideration from the complainant in his presence, later Vijaya Nirmala went away without registration and pending suit filed by complainant, Vijaya Nirmala and her father passed away; later he came to know A1, no other than his son designed a plan to say A2 is as if Vijaya Nirmala by forged documents. Name of second wife of A1 is Sri Lakshmi @ Lakshmi; till 2006, himself, A1 and A2 along with family members lived together at Gowravaram.

7. The cognizance order of the learned Magistrate, pursuant to which reads the sworn statements supra gives inference of sufficient grounds for proceedings. Hence, cognizance taken. It

was not discussed as to what is original signature of Vijaya Nirmala and the signature on the gift, in favour of A1 how different with that of Vijaya Nirmala to say impersonated by A2 and if so, what are the original signatures of A2, to say, it is outcome of impersonation, which is crucial if at all to give credence to the version of the complainant and even the sworn statements no way mentions of the two witnesses anything in this regard, but for, in saying Vijaya Nirmala by then no more. Even this aspect is in controversy as can be seen from the earlier docket proceedings before the Court. Leave it apart the original referred report of the private complaint referred to police from investigation as civil nature got the basis that was not properly adverted to it by the learned Magistrate in proceeding with the protest application that too if at all the protest to be raised is against earlier investigation and any cognizance on protest to be taken is after referring to earlier investigation and with reasons as to how it is faulty or erred and in what extent and with what material that is not even there, a protest petition is an outright fresh complaint was even ignored by the learned Magistrate even taken cognizance therein. The law in this regard is very clear from the expression of this Court in S.Balakrishna v. State of Telangana in Crl.P.No.4319 of 2015, dated 28.01.2016.

8. Further, importantly the de facto complainant has no *locus*, as his case is pending for specific performance in O.S.No.83 of 2008 by then and it is his averment that the so called resettlement by said Vijaya Nirmala was in December 2008 during pendency of the

suit, which he claimed A2 impersonated as said Vijaya Nirmala in the version of A1 and A2 in creating the settlement, the remedy proper for him if at all there from is to implead A1 and A2 as co-defendants to the suit against Vijaya Nirmala in saying said settlement subsequent to the unregistered settlement deed in his favour not binding on him and they also to join in execution of sale deed in his favour. Leave about A1 is husband of said Vijaya Nirmala, other wise being the legal representative for not a case of other legal representatives available and once such is the case, whether settlement executed or not makes no difference, once he succeeded being the husband of Vijaya Nirmala and to say Vijaya Nirmala got any children including through any second husband, he did not choose to implead any legal representatives, leave about his legal representatives application ended in dismissal and suit also it appears ended in dismissal. It is not the case of passing of title under the so called agreement or unregistered sale deed by passing of alleged entire consideration but for gives a right to maintain a suit for specific performance. Having regard to the above cloud and the protest petition cognizance taken is without referring to the earlier investigation material, which is not sustainable the said cognizance order of the learned Magistrate is unsustainable.

9. Accordingly the Criminal Petition is allowed quashing the proceedings in C.C.No.345 of 2013 on the file of the Judicial Magistrate of First Class, Kavali, which is without prejudice to the right of the complainant to implead in the said suit for specific

performance pending if any, the so called accused and any other legal representatives of Vijaya Nirmala and to seek for a permission the affect of the so called subsequent settlement after agreement or unregistered sale in his favour not binding on him.

10. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 09.11.2018
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