

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.4556 of 2013

ORDER :

This petition under Section 482 of Cr.P.C. is filed seeking to quash the proceedings in crime No.27 of 2013 of Medchal Police Station, Cyberabad, on the file of the XV Metropolitan Magistrate at Medchal, Cyberabad.

2. The contention of the petitioner/A1 is that he never given any false information as alleged. The complainant/2nd respondent herein and another G.P.A. holder given oral consent for giving affidavit to A2 for the purpose of sale transactions of A2's immovable property and not for the purpose of filing the civil cases. A2 approached the petitioner and requested to give affidavit for sale and development of his immovable property which is situated in Sy.No.190 of Jeedimetla Village. He never stated or mentioned that the petitioner is still GPA holder of the accused No.2, as per the contents of the affidavit of the petitioner, still their principal is in peaceful possession of an extent of 598 square yards in Sy.No.190. This fact is wrongly interpreted by the respondent No.2 and filed false case. As per Section 195 of Cr.P.C. the Public Servant or Judicial Officer has to lodge written complaint for prosecution of the offence under Section 182 of I.P.C., but the respondent No.2 has no authority to give such a complaint.

3. *Per contra*, the 2nd respondent contended that the petitioner gave affidavit, which is marked as Ex.P5 in I.A.No.983 of

2012 in O.S.No.162 of 2012 as if he along with R2 and another still holds G.P.A., even though G.P.A. was revoked by A2 vide document No.112 of 2002 on 14.11.2002 and they never consented to give such an affidavit which really attracts Section 182 of I.P.C.

4. The Assistant Public Prosecutor representing the Public prosecutor submitted that the ingredients of Section 182 I.P.C. are clearly stated and the notary affidavit of the petitioner is filed before the Court and basing on the same, the Court was misguided. Accordingly, plaint is maintainable.

5. Now, the point that arises for determination is :

“Whether there is *prima facie* material to prosecute the petitioner/A1?”

The undisputed facts spell out from the record are that one, V.Satyanarayana/A2 purchased Ac.4.37 guntas in Sy.No.190 under sale deed dated 25.11.1977 executed by Narahari Rao. It is also an admitted fact that the said V.Satyanarayana/A2 executed registered GPA dated 21.3.1989 in favour of the complainant/R2, Yellanna/A1/petitioner herein and Chennaiah, who are none other than the office bearers of the then Boundha Nagar Welfare Association Society. The GPA holders made the lands into plots and the open place as a shed. As differences arose between the GPA Holders, A2 revoked the GPA under Document No.112 of 2002 on 14.11.2002. The poultry shed is being used by the association members to conduct cultural activities without any objection. The facts clearly show that GPA dated 21.3.1989 executed by A2 in

favour of the complainant, petitioner and Chennaiah was revoked on 14.11.2002.

6. The petitioner gave an affidavit before notary on 10.9.2012 in the words "I am the deponent herein, as such I am well acquainted with the facts of the case deposed herein and also deposing on behalf of other GPA Holders" which *prima facie* made out that the petitioner herein is giving the affidavit on behalf of the complainant and also another GPA Holder Chennaiah.

7. The affidavit further goes to suggest that the petitioner/A1 is one of the GPA Holder of Sri V.Satyanarayana Rao/A2 under document bearing No.278/89 in respect of land in Sy.No.190 situated at Jeedimetla Village. Basing on the GPA they have sold to prospective plots purchasers. It is further submitted that they have not sold poultry shed admeasuring 598 square yards. Sri V.V.Satyanarayana who is their principal is still in peaceful possession of said extent. This affidavit is marked as Ex.P5 in I.A.No.983 of 2012 in O.S.No.162 of 2012 on the file of the Principal Junior Civil Judge at Medchal, Ranga Reddy District, wherein revocation of GPA dated 21.3.1989 was also marked as Ex.P4, which was relied on by the Principal Junior Civil Judge, Medchal in I.A.No.983 of 2012 in O.S.No.162 of 2012. A2 relied on the affidavit of the petitioner to make out that still he is in possession of the open place which is being used by the association for conducting cultural activities. The Principal Junior Civil Judge opined that the existence of poultry shed is even prior to the purchase of A2 in the year 1975 and held that the construction of shed does not arise.

8. In the case of *Mrs.Kavita Vs. Shri B.S.Verma and another* (1999 CRI.L.J. 1839) it was held that “in view of Section 195 (a)(iii) of Cr.P.C., in order to maintain the complaint for the offence under Section 182 I.P.C. the complaint must be filed either by the person before whom such information was given or the superior officer of the public servant. Here, Arokiodas is not complainant nor B.S.Varma, complainant herein, is the Superior Officer of Arokiodas. In view of this contention of the counsel for the petitioner, has to be accepted and the complaint cannot be maintained under Section 195 (a)(iii) Cr.P.C.”

9. In this case the complainant is one of the original GPA Holder along with A1 who gave the affidavit before the notary. The specific averment of R2/complainant is that they never consented to give such an affidavit by the petitioner. But, according to the petitioner, the 2nd respondent/complainant and Chennaiah, the other GPA Holder, gave oral consent, which is a fact to be adjudicated in the main criminal case. As the matter stood thus, as per A2, the said GPA dated 21.3.1989 was revoked on 14.11.2002 by A2. As seen from the notary affidavit of the petitioner it gives an impression that the petitioner gave the affidavit on behalf of other GPA Holders i.e., the complainant/R2 and another GPA Holder Chennai. In the said affidavit it is clearly stated that still V.Satyanarayana is in possession of poultry shed and that V.Satyanarayana has executed original GPA and he is their Principal. It does not give any meaning that the original GPA document No.278/1989, dated 21.3.1989 was revoked by A2 on 14.11.2002.

10. *Prima facie* affidavit gives an impression that it was given on behalf of complainant/R2 and also other GPA Holder Chennaiah and still GPA is subsisting and there is no mention about the cancellation of GPA on 14.11.2002. It is alleged that by this affidavit petitioner gave false information that he is still GPA Holder of A2.

11. A reading of Section 182 of I.P.C. goes to suggest that it deals with regard to false information with an intention to cause public servant to use his lawful power to the injury of another person. Such information must be to the public servant which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him. According to which, knowing fully well that it is false if any person gives false information to the public servant to do or omit to do anything, then Section 182 I.P.C. attracts.

12. Section 195 (a)(iii) of Cr.P.C. is a provision for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

13. In the present case the petitioner gave an affidavit before the notary stating that he is giving affidavit on behalf of other GPA Holders i.e., R2 and Chennaiah with regard to GPA which has revoked as early as 14.11.2002 itself and he says that A2 is still in possession of poultry shed. The affidavit produced before the Civil Court is marked as Ex.P5. It is not the complaint given by the court or

public servant, but it is the complaint given by R2 aggrieved by the allegedly false affidavit given by the petitioner/A1.

14. In *Mrs.Kavita's case* (supra), relied on by the petitioner, the complaint disclosed that on 5.2.1985 warrant of authorization under Section 132 of the Income Tax Act was issued by the Director of Inspection for the search of the premises of M/s.Business Corporation of India having their address at Himgiri, Peddar Road, Bombay-26. Shri A.L.Arokiodas, A.D.I. (Investigation) along with some other Officers conducted search in the premises of the accused and also statement of the accused was recorded. In the complaint it was averred that certain false statement has been made by the petitioner during the search. On that basis, complaint has been filed before the Magistrate under Section 191 read with Sections 193 and 182 I.P.C. During framing of charges, the Magistrate found that no offence has been made out under Sections 191 and 193 of I.P.C., but the Magistrate found that the offence under Section 182 I.P.C. has been made out.

15. In the instant case the complainant is not the party before the civil Court and he is only assailing authorization to the petitioner/A1 stating that he has never given any such authorization. In the complaint the offences alleged against the petitioner are under Sections 406, 420 and 182 I.P.C. and the same was forwarded to the police under Section 156(3) Cr.P.C. There is nothing to suggest any contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

16. In view of specific allegations in the complaint, I am of the considered view that there is nothing to suggest that the 2nd respondent by giving a complaint abused the process of law or any prejudice is caused to the petitioner.

17. In the result, the criminal petition is dismissed, while vacating the interim stay granted on 17.7.2013, which was extended on 13.8.2013, 13.9.2013 and 8.11.2013.

18. Consequently, miscellaneous petitions pending, if any, shall stand closed.

26th February, 2018

skmr

JUSTICE N.BALAYOGI

