

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9590 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-accused to quash the proceedings against her in C.C.No. 420 of 2014 on the file of the Court of II Metropolitan Magistrate for Railways, Secunderabad (for short, 'the Court below').

2. The main ground urged before this Court is that when affidavit of late Venkata Swamy Goud dated 15-09-2008 was upheld by judgment dated 27-03-2017 in O.S.No. 191 of 2011 on the file of the Court of XXVII Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the civil Court'), the proceedings against the petitioner for the same dispute cannot be continued and it amounts to abuse of process of the Court.

3. Respondent No.3-party in person filed counter affidavit reiterating the contentions raised in the complaint and brought to the notice of this Court about filing of appeal against the decree and judgment dated 27-03-2017 which is the subject matter in C.C.C.A.No. 157 of 2017 before this Court and therefore requested to dismiss the petition.

4. It is an undisputed fact that alleging that affidavit dated 15-09-2008 of late Venkata Swamy Goud was fabricated, respondent No. 3 filed O.S.No. 191 of 2011 before the civil Court against the petitioner herein. In the said suit, respondent No. 3 claimed various reliefs *i.e.* cancellation of gift settlement deed dated 04-10-2008 and for granting permanent injunction restraining the petitioner and persons claiming through her from in any manner encumbering or alienating the plaint schedule property. By decree and judgment dated 27-03-2017, the

civil Court dismissed the suit and recorded a fact finding in para No. 20 of the judgment upholding the contention of the petitioner. Aggrieved by the decree and judgment dated 27-03-2017, respondent No. 3 preferred C.C.C.A.No. 157 of 2017 before this Court and it is pending. Therefore, the finding with regard to Ex.A9 alleged to have been fabricated by the petitioner has not attained finality. It is the contention of learned counsel for the petitioner that preferring statutory appeal is not a bar to quash the proceedings since the decree and judgment in O.S.No. 191 of 2011 are not suspended during pendency of the appeal. No doubt, no order has been passed suspending the decree and judgment by exercising power under Section 151 of the Code of Civil Procedure by the appellate Court as no such application is filed. Appeal is continuation of suit and the findings of civil Court are subject to judgment in the appeal pending before this Court. Failure to file application to suspend the decree and judgment in O.S.No. 191 of 2011 and preferring appeal against it are not grounds to quash the proceedings. I, therefore, find no substance in the contention of learned counsel for the petitioner to quash the proceedings.

5. As seen from the material on record, the petitioner admittedly filed Criminal Petition No. 2252 of 2012 before this Court to quash the proceedings in crime stage and the same was dismissed as withdrawn with liberty to the petitioner to file fresh petition after filing of charge sheet. Accordingly, the petitioner filed Criminal Petition No. 5545 of 2012 to quash the proceedings before the petitioner was charge sheeted. This Court by order dated 23-07-2012 dismissed the same on the ground that question of sufficiency of evidence arises after investigation is completed and charge sheet is filed. After filing charge sheet, the petitioner again filed Criminal Petition No. 8450 of 2012 to quash the

proceedings. This Court by order dated 29-11-2012 dismissed the same by observing as follows:

"Whether this document is fabricated or whether it was executed by B.Venkata Swamy or not are the matters required to be proved during the course of trial only. The statements of the witnesses coupled with averments in the charge sheet would clearly go to show a prima facie case against the petitioner that she fabricated a false document purported to have executed by her father when he was sick. Hence, there are no grounds to quash the proceedings."

By the date of order in Criminal Petition No. 8450 of 2012, O.S.No. 191 of 2011 was not decided and it was subsequently dismissed on 27-03-2017 holding that respondent No. 3 herein and other plaintiffs were unable to prove that there was undue influence and fraud has been played by the petitioner upon late B.Venkata Swamy. In view of the changed circumstances, the present petition is filed.

6. The principle laid down by the Apex Court in ***K.G.Premshanker Vs. Inspector of Police and another***¹; and this Court in ***Anil Kumar Aggarwal Vs. State of Andhra Pradesh***² relied upon by respondent No. 3 with regard to admissibility of civil Court judgment in criminal prosecution has no relevance at this stage. The Apex Court time and again held that filing of successive applications under Section 482 of Cr.P.C. is impermissible and deprecated such practice. I, therefore, find no ground to quash the proceedings and the criminal petition is liable to be dismissed.

7. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 30-07-2018.

JSK

M.SATYANARAYANA MURTHY, J.

¹ (2002) 8 SCC 87

² CRIMINAL PETITION No. 2265 of 2015