

THE HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No. 9229 of 2011

ORDER:

Heard the learned counsel for the petitioners, learned Public Prosecutor and the learned counsel appearing for the second respondent.

2. The present criminal petition is filed by the petitioners herein who are A-1 to A-4 to quash the proceedings initiated against them in Crime No.45 of 2011 for the offences punishable under Sections 465, 467, 468, 477, 474, 506 r/w section 34 IPC of Nellore III Town Police Station, SPSR Nellore District.

3. The facts of the case are that originally the second respondent herein filed a private complaint before the Court of Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore against the petitioners herein. The case of the second respondent is that he belongs to muslim community. He was doing tractor mechanic works and eking out his livelihood. He made an application in the name and style of Khaja Garibul Nawab Mines (Partnership Firm) on 11.01.2008 and 16.01.2008 to the Assistant Director of Mines and Geology, SPSR, Nellore District to do quarry business by taking the government lands on lease i.e. an extent of Ac.371.28 cents in Sy.No.1903/2 of Kothuru, Nellore Bit-I. He has also applied for NOC to the Tahsildar, Nellore Rural. When the second respondent was attending the office of the Tahsildar, A-4 came to know all the details of the above said land, in collusion with other

accused, created agreements to an extent of Ac.40.00 cents in the year 1985, A-2 for an extent of Ac.25.00 cents in the year 1996. In the year 2009, they paid necessary fee under ROR proceedings and obtained title deeds and pattadar pass books from the then Tahsildar. After coming to know of the same, the second respondent obtained certified copy of the said documents from the office of the Registrar, Nellore and found that the persons who executed the alleged agreements of sale were no more by the date of execution of the said agreements. The second respondent also filed the death certificates of the vendors for perusal of the court. He has also stated that an enquiry was also going on against the Tahsildar and his staff with the concerned Tahsildar Sheshu Reddy who was transferred on grave allegations in the complaint. The Vigilance and Enforcement authorities also enquired into the matter and submitted report against the Tahsildar to the government that the officials are the real culprits in collusion with the petitioners herein. In this connection, the Joint Collector, SPSR Nellore District also thoroughly enquired into and gone through the fabricated documents and pronounced an order to the effect that the subject land is not the inam land and it is a government land. It is relevant that the pattadar pass books and title deeds issued in favour of 9 persons therein which include the petitioners 1 and 2 herein were cancelled in respect of an extent of Ac.163.29 cents in Sy.No.1903/2 of Kothur village of Nellore mandal vide orders, dated 17.03.2012. The second respondent also stated in the complaint that misrepresenting the facts the petitioners filed W.P.No.31083 of 2010 in this Court and attempted to obtain interim orders and the

said writ petition is still pending consideration in this Court. In these circumstances, requested the Magistrate to forward the complaint to the police concerned. The Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore after going through the contents of the complaint, by orders, dated 18.03.2011 forwarded the complaint to the Urban Circle Inspector of Police, Nellore for investigation and report. In pursuance of which, the first respondent registered the crime vide F.I.R.No.45 of 2011 for the offences referred supra. Aggrieved by the registration of said crime, the petitioners herein filed the present complaint.

4. The learned counsel appearing for the petitioners basically submitted that the second respondent herein is nothing to do with the subject lands and is totally a stranger. He has applied for licence to quarry the lands whereupon he was informed by the government that the subject lands are not the government lands. He has also contended that a suit in O.S.No.232 of 2010 is pending against several purchasers including the petitioners 1 and 3 herein apart from pendency of the writ petition as stated supra in this Court and therefore, the criminal proceedings in the form of registration of crime cannot be maintained against the petitioners. To substantiate his contention, he relied on the judgment of the Apex Court in MOHD. KHALID KAHN v. STATE OF UTTAR PRADESH AND ANOTHER¹. The facts in the said case are that a civil suit and first appeal are pending litigation on the subject matter and issue with regard to ownership of the land in question is yet to be finalized in

¹ (2015) 15 SCC 679

the suit and in the first appeal and in respect of the same subject land, criminal prosecution was launched. In those circumstances, the Apex Court quashed the proceedings initiated against the petitioners therein.

5. Secondly, the petitioners relied on another judgment of the Apex Court in *PARAMJEET BATRA v. STATE OF UTTARAKHAND AND OTHERS*². The basic contention raised in the said judgment is that a suit has been filed on the basis of fabricated documents and the said suit is pending. Therefore, the documents on which reliance is placed by the appellant are genuine or not and are forged and fabricated, will be considered by the civil Court. In those circumstances, the criminal proceedings initiated against the appellants therein were quashed.

6. Per contra, the learned Public Prosecutor appearing for the first respondent submitted that in order to create rights and interests over the subject property and for the purpose of grabbing the government land, the petitioners herein created agreements of sale in the names of third parties and from whom the registered documents were executed. Basing on which, mutations were also effected.

7. The learned Public Prosecutor also contended that the bar under Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to the document after it has been

² (2013) 11 SCC 673

produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis. However, if such offence is committed prior to its production or giving in evidence in Court, no complaint by Court would be necessary and a private complaint would be maintainable. To support his contention he relied on the judgment of Apex Court in IQBAL SINGH MARWAH AND ANOTHER v. MEENAKSHI MARWAH AND ANOTHER³. The Apex Court after considering the Section 195(1)(b)(ii) of Cr.P.C. pleased to hold that that the bar would be attracted only when the offences enumerated in Section 195(1)(b)(ii) of Cr.P.C. have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis. However, if such offence is committed prior to its production or giving in evidence in court, no complaint by court would be necessary and a private complaint would be maintainable. Explaining the scheme of Section 195 Cr.P.C. the Apex Court was pleased to observe as follows:

“In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated only when the offences enumerated in the said provision have been committed with respect to the document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.”

³ (2005) 4 SCC 370

8. The learned counsel for the second respondent also would submit that for the purpose of grabbing the government land, the petitioners herein committed cognizable offences against the State by creating forged and fabricated documents with an intention to grab the government land. He also would submit that for setting law into motion, the second respondent need not have any interest. However, he stated that since the government property is being grabbed, any person can file a complaint.

9. In the case on hand, the specific case of the second respondent is that the land admeasuring Ac.371.28 cents in Sy.No.1903/2 of Kothur is a government land. However, the petitioners herein in collusion with the concerned officials particularly, the Tahsildar and the subordinate staff created forged and fabricated documents and based on which pattadar passbooks and title deeds were obtained. On a complaint, the R.D.O., Nellore conducted an enquiry and passed orders in D.Dis.(J)2709/2010, dated 04.06.2011 cancelling the pattadar pass books and the title deeds issued in favour of 9 persons mentioned therein including the petitioners 1 and 2 herein to an extent of Ac.163.29 cents in Sy.No.1903/2 of Kothur village of Nellore Mandal. Aggrieved by the said orders, an appeal was filed before the Joint Collector, SRSP, Nellore District. The Joint Collector after verification of the records, and after hearing the case, he found that the subject land is not an inam land and it is a government land and upheld the orders of the R.D.O., Nellore vide orders, dated 17.03.2012.

10. Now coming to the facts of the present case, it is not the case of the petitioners that there is a bar under Section 195(1)(b)(ii) of Cr.P.C. and as such the offences cannot be investigated into and the concerned Magistrate has no jurisdiction to take cognizance of the offences for which they are charged. A mere perusal of the facts would reveal that there appears to be creation of documents by forgery and in the process executed the registered documents and after mutation a claim has been put on the land. However, on the complaint of the second respondent herein, the revenue authorities basing on the record and after hearing the case, pleased to hold that the subject land is not an inam land and it is a government land. The citations relied upon by the learned counsel for the petitioners are not applicable to the facts and circumstances of the case on hand.

11. While exercising jurisdiction under Section 482 Cr.P.C. this Court has to be cautious. The power has to be used sparingly and only for the purpose of preventing the abuse of the process of any court or otherwise to secure the ends of justice. Whether the complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by this court. A complaint disclosing civil transactions may also have a criminal texture. But, this court must see whether the dispute which is essentially of a civil nature is given a cloak of a criminal offence, in such a situation, if a civil remedy is available criminal proceedings cannot be initiated. But, admittedly in the case on hand, this court cannot go into the aspect whether the subject land is an inam land

or a government land, as the procedure adopted by the petitioners herein in collusion with the concerned officials in creating the forged and fabricated documents and as upheld by the revenue authorities, certainly will not come within the ambit of the matters which are civil in nature. The said aspect can be elicited only after thorough investigation. Therefore, this Court is not inclined to interfere with the investigation sought to be done by the first respondent.

12. Accordingly, the criminal petition is dismissed. The miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Interim order, if any, passed by this court shall also stand vacated.

Date: 17.04.2018
Ccm

JUSTICE P. KESHA VA RAO



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