

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.8787 and 9296 of 2018

COMMON ORDER :

The petitioners in CrI.P.No.9296 of 2018 are A.4 and A.5, by names, J. Srinivas Reddy, Village Revenue Officer, Kothur Village and Natte Jyothi, Mandal Revenue Officer, Bhoothpur Mandal, whereas the petitioner in CrI.P.No.8787 of 2018 is A.6 by name V.Laxminarayana, Revenue Divisional Officer, Mahabubnagar respectively in C.C.No.311 of 2018 on the file of the Judicial First Class Magistrate, Jadcherla, Mahabubnagar District, where the learned Magistrate has taken cognizance against six accused on the protest petition of the 1st respondent-K. Dhooli, cultivator of Bhagavan Thanda, Kothur Village, Bhoothpur Mandal, Mahabubnagar District, for the offences punishable under Sections 166, 468, 471, 420 and 120-B read with 34 IPC by issuing summons to the accused persons, which is out come of Crime No.162 of 2017 of Bhoothpur Police Station, registered for the offences supra by police on 22.09.2017 from the report of the 1st respondent/*de facto* complainant and police after investigation filed the final referred report of civil in nature.

2. The sum and substance of the accusation in registration of the crime on 22.09.2017 originally speaks that two years back the 1st respondent/*de facto* complainant purchased land of Ac.0.30 gts. in Sy.No.42 and Ac.03.11 gts. in Sy.No.45 of Kothur Village of Bhaghavan Thanda, from her forefathers viz., Chandya, Sathya and Laxman, for consideration, and since then she is in possession and enjoyment of the

land. In the recent times, her name was removed from the revenue records for the land stating her neighbours i.e., Mannem Sambaiah, Mannem Lingaiah @ Lingamaiah and Mannem Venkataiah created forged documents alleging she already sold out that land. The complainant further alleges that they have taken her false finger prints and created forged documents and based on those false documents managed the revenue officials i.e., V.R.O., M.R.O., and R.D.O. (A.4 to A.6) supra, by conspired with them in cause removing her name and cause entering their names and they are liable for the tampering of records, forgery and cheating. The police final report cites as many as seven witnesses including the Sub-Inspector, who registered the crime and the Inspector, who filed after investigation the referred report, as LWs.6 and 7 respectively, among the others are LW.1 is complainant, LW.2-Sakru Naik is *de facto* complainant's husband, LWs.3 is adjacent land owner of Sy.No.45 and LWs.4 and 5 are scene observation panchanamadars, in saying after registration of the crime, having examined the witnesses and *de facto* complainant, was asked to produce relevant records and she submitted copy of pattadar passbook bearing No.157, Xerox copy of Encumbrance Certificate, copy of sale deed, ROR and adangal pahani and in the course of investigation by the Inspector, when examined the *de facto* complainant and her husband after examination of the scene of offence on so-called land and preparation of rough sketch, LW.3 neighbour to Sy.No.45 when cause secured from the office of Tahasildar, Bhoothpur, certified copies of the revenue

documents for Sy.Nos.42 and 45, those disclosed the total land of Sy.No.45 is Ac.10.35 gts., out of Ac.10.35 gts as per sadabinama, dated 01.01.1962, Ac.5.20 gts. felt to M.Masaiah, father of applicant/M.Sambaiah purchased and on verification of revenue records, it revealed Ac.3.16 gts. standing in the name of Masaiah's son, Ac.1.00 gts. in the name of M. Lingaiah, under registered document bearing No.1576 of 1985, dated 16.09.1985, and remaining Ac.1.04 gts. mutated in the name of M.Sambaiah on 29.06.2017 issued by Tahasildar, Bhoothpur. The Survey No.42 an extent of Ac.0.30 gts., mutated in the name of Manyam Lingaiah, by proceedings, dated 11.07.2017, of the Tahasildar, Boothpur and both proceedings for Sy.Nos.42 and 45 supra reveal with reference to the investigation by open enquiry also and from the spot inspection, Mannem Sambaiah is in possession right from 1962, whereas the complainant relies on ROR of 2008 and thereby there is a title dispute in relation to Sy.Nos.42 and 45 civil in nature, where redressal before Revenue Appellate Authority or before Civil Court if the remedy open and *de facto* complainant suppressed the material facts in lodging the complaint of the civil dispute without basis.

3. The protest petition averments speaks that what the police final report speaks of verification of the revenue records is the complainant's case of out come of forgery. The learned Magistrate on the protest petition observed that according to her report to the police, she claimed purchased from her forefathers Ac.0.30 gts in Sy.No.42 and Ac.3.11 gts. in Sy.No.45 and accused created forged documents and from perusal of

the final report proceedings of police after investigation of the crime from the F.I.R. registered after scene observation and examination of LWs.1 to 3 other relevant documents filed, what the Investigating Officer stated the complainant refused notices in April/May 2017 to produce records and later stated of on 23.06.2017 the complainant present and record verified shows pattadar names was Valya, Hajya, Sanjya, Chandya and Laxmya and therefore father of A.1 recorded in sadabainama, dated 01.01.1962, and the *de facto* complainant mentions the same is unauthorized recording. A.1's purchase is under sadabainama (simple unregistered sale deed) from the ancestors of pattadars supra, from which A.1 in possession of Ac.1.04 gts, where as the *de facto* complainant is in possession of Ac.2.17 gts., and A.5/R.D.O. cause ordered on the sadabainama changes in ROR to issue 13-B certificate to A.1 by holding the complainant's name appears in the record unauthorizedly without proper verification, for A.1 claiming through K.Valya and A.5 implemented on mutation of land in the name of A.1 from the application of A.1 as purchased through registered sale deed bearing No.1575 of 1985, dated 16.09.1985, and Ac.0.30 gts. of land in Sy.No.42 mutated in the name of A.2 from the complainant allegedly sold to A.2 and the panchanamadars of the open enquiry on 23.06.2017, panchas are not of adjacent land owners to speak on possession, the panchanama conducted by A.3 and A.5 from the application of A.1 to A.5. It is observed that the Magistrate shall not blindly accept the police final report and there must be application of

mind to take cognizance and the Magistrate can take into account statements of witnesses examined by police during investigation in order to issue process or not to accused and Magistrate not bound by Investigating Officer's opinion and Magistrate where for sufficient ground referred final opinion and can take cognizance. The learned Magistrate in the cognizance order observed, there is no bar under Section 197 Cr.P.C. and entered into criminal conspiracy while discharging official duties as the purpose is to advance the cause of justice and good governance. The said cognizance order, dated 05.06.2018, refers about four witnesses, statements recorded as LW.1/*de facto* complainant, LW.2 her husband, LWs.3 and 4 P. Ramulu and Venkataiah, who are not the witnesses referred in the police investigation. The learned Magistrate did not discuss what the witnesses stated as to P.Ramulu and Venkataiah and not even stated what were the statements of the witnesses LWs.1 to 3 covered by the police final report. The allegation in fact is based on un-registered sadabainama of 1962 the mutation was cause effected. In fact, a perusal of the police final report shows for Sy.No.45 right from 1962 the name of A.1 since father's time there in the revenue records and the complainant's ROR record is only of 2008. Once it is from that verification even mutation made after enquiry that too when it is in discharge of the official duties and not the claim that it is not part of discharge of the official duties of any of the accused herein as V.R.O., M.R.O., and R.D.O., i.e., A.4 to A.6, the taking of cognizance without sanction is *per se* unsustainable. It is not a case of

criminal conspiracy by any worth material of the officials joining hands with A.1 and A.2 from mere mutation by regularization of unauthorized sale. In the absence of showing some basis for the alleged conspiracy even for the learned Magistrate to say as if no sanction required. Sanction is a must for the private complaint to take cognizance including on a protest petition to take cognizance before taking of cognizance for the complainant to produce as also held by the Apex Court in **Anil Kumar and others vs. M.K. Aiyappa and another**¹, thereby the prosecution is unsustainable.

4. Accordingly, both the criminal petitions are allowed by setting aside the cognizance order, dated 05.07.2018, in Crl.M.P.No.958 of 2018 in C.C.No.311 of 2018 on the file of the Judicial First Class Magistrate, Jadcherla, Mahabubnagar District. It is made clear of no bar to take cognizance afresh on production of sanction proceedings/order if otherwise made out case.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dated : 15-12-2018

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¹ (2013) 10 SCC 705