

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7755 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. by the petitioners/A1 to A5 seeking to quash the proceedings against them in C.C.No.439 of 2017 on the file of Additional Junior Civil Judge, Mangalagiri, Guntur District wherein cognizance was taken for the offences under Sections 120B, 419, 420, 467, 468, 471, 474 r/w 34 IPC.

2) The 2nd respondent is the defacto complainant. A1 is the son of defacto complainant. A2 is the wife, A3 and A4 are parents-in-law and A5 is the brother-in-law of A1.

3) The defacto complainant lodged complaint with the police of Mangalagiri Town PS against the accused which was registered as case in Cr.No.56 of 2015.

4) The brief facts of the complaint are that the husband of complainant worked in Railway Department and retired in 1997 and died on 30.09.2004. They have a son—A1 and two daughters—LWs.2 and 3. During the life time of her husband, A1 married A2 and due to disputes he took some property and divided and went away and he did not turn up even to perform the obsequies of his father. The complainant was residing with her daughters and they are looking after her welfare. Complainant's maternal grand-mother gifted her Ac.3.13 cts. of land under a gift deed No.686/1974 dated 26.04.1974. The complainant had gifted the said land in two equal shares to her two daughters

under two gift deeds dated 12.07.2010. When her daughters went to take possession of the said land, they came to know that all the accused conspired together and A1 got obtained a registered gift deed No.3923/2009 dated 17.08.2009 impersonating A4 who is his mother-in-law, as his mother i.e. complainant. A3 and A5 acted as attestors-cum-identifying witnesses to the said document. Basing on the forged document A1 obtained pattadar pass book and title deed in his name in respect of complainant's land of Ac.3.13 cts. gifted by her grant-mother and another Ac.0.10 cts. of house site belonging to complainant. On that, the complainant filed O.S.No.285 of 2011 before II Additional District Judge, Guntur seeking cancellation of the gift deed obtained by A1. A decree was passed in the said suit. The complainant applied to RDO and MRO for cancellation of title deed and pattadar pass book issued in favour of A1. Knowing the same all the accused started harassing the complainant and her daughters. Hence the complainant. The police after investigation filed charge sheet which was taken cognizance and registered as C.C.No.439 of 2017.

Hence the instant Criminal Petition for quashing the C.C.

5) Heard arguments of Sri Vedula Srinivas, learned counsel for petitioners, learned Additional Public Prosecutor (AP) for respondent No.1 and Sri G.Vasanth Rayudu, learned counsel for the 2nd respondent/complainant.

6) Severely fulminating the charge sheet, learned counsel for petitioners would argue that gift deed was executed by complainant in favour of A1 and

later on the ill-advice of daughters she gave report to police more than 5 years after the execution of gift deed and hence at the very first instance, the police ought to have rejected the complaint without filing charge sheet and the Court ought not to have taken cognizance of the case. He sought for quashment of the proceedings on the following arguments.

a) Firstly, he would argue that the complainant has already filed civil suit—O.S.No.285 of 2011 for cancellation of the gift deed and initially an ex-parte decree was passed and later the ex-parte decree was set aside as per order dated 20.02.2015 in I.A.No.1241 of 2013 and the suit was restored to file for trial and the trial is proceeding on. As the complainant resorted to civil proceedings, the criminal proceedings are not maintainable.

b) Secondly, he would argue that challenging the investigation, while pending the civil suit, the petitioners filed W.P.No.9386 of 2015 wherein as per order dated 06.04.2015, this Court directed that investigation may go on but the petitioners shall not be arrested. Thereafter, the IO proceeded with the investigation and filed CFR No.3071 of 2015 in Cr.No.56 of 2015 before the Additional Junior Civil Judge, Mangalagiri under Section 311-A Cr.P.C. to summon the complainant and A1, A3 to A5 and obtain their sample signatures and thumb impressions and to forward them to handwriting expert to compare those signatures and thumb impressions with the signatures and thumb impressions on the gift deed dated 17.08.2009 and to give his report. In spite of the objections raised by the petitioners, the said petition was allowed on 30.06.2015 and the case was posted to 07.07.2015 for obtaining the signatures and thumb impressions of the parties. In the meanwhile, challenging the said

order the petitioners filed CrI.R.C.No.1333 of 2015 and the same was allowed by this Court holding that the impugned order is hit by proviso to Section 313-A Cr.P.C. The said order was brought to the notice of the trial Court and thereby the petition was closed by the trial Court on 25.08.2015. In spite of the same, in the charge sheet the IO noted that Additional Junior Civil Judge, Mangalagiri obtained signatures and thumb impressions of the complainant in the open Court on 07.07.2016 and referred to the expert and the expert has given report as if the signatures of the complainant on the gift deed were forged and basing on the said report the IO filed charge sheet. Learned counsel would argue in vehemence, in view of the order in CrI.R.C.No.1333 of 2015 the trial Court's obtaining the specimen signatures and thumb impressions of the complainant is illegal besides contemptuous and therefore, all further proceedings are vitiated by such illegality and therefore, the charge sheet is not maintainable under law.

7a) Per contra, while supporting the charge sheet, learned counsel for 2nd respondent/complainant would argue that merely because the complainant taken recourse under a civil suit that will not prevent her to lodge the police report and on that ground the petitioners cannot seek for quashing of the proceedings.

b) Nextly, he would argue that even before the order in Cr.R.C.No.1333 of 2015, the trial Court obtained the specimen signatures and thumb impressions of the complainant and referred to the expert. The order in Cr.R.C.No.1333 of 2015 only prohibits from obtaining the signatures and thumb impressions of petitioners/accused and not that of complainant and hence, obtaining her

signatures and thumb impressions will not amount to violation of order in Cr.R.C.No.1333 of 2015.

c) Learned counsel would further argue, expert has clearly opined that the signatures and thumb impressions on the questioned gift deed do not belong to the complainant and therefore, the said document was a forged one. Basing on the said report and also the statements of LWs.8 and 10 the IO filed the charge sheet. Learned further argued that signatures and thumb impressions were obtained in open Court on 07.07.2015 but not on 07.07.2017 and the latter date was mentioned expert's report by mistake and the same need not be viewed seriously. He thus prayed to dismiss the petition.

8) Learned Addl.P.P. argued in similar lines.

9) The point for determination is:

“Whether there are merits in this Criminal Petition to allow?”

10) **POINT**: I have given my anxious consideration to the facts of the case and the charge sheet filed by the IO. The prosecution case in simple is that A1 in collusion with the other accused fabricated gift deed dated 17.08.2009 as if the complainant gifted her properties to A1 by impersonating A4 as his mother. Be that it may, the first contention of the petitioners is that since the complainant had already filed civil suit seeking cancellation of the gift deed on the ground of forgery and impersonation, criminal case on the same ground is not maintainable. I am afraid, this argument is untenable. The trite law is that when the same act of a person gives rise to both civil liability and

criminal offence, the aggrieved can initiate both simultaneously (vide *Vijayander Kumar vs. State of Rajasthan*¹). Therefore, merely because the complainant filed O.S.No.285 of 2011, that will not interdict to launch criminal prosecution against the accused.

a) The next argument of the petitioners is that in view of the orders in CrI.R.C.No.1335 of 2015 dated 16.07.2015, Magistrate's obtaining signatures and thumb impressions of the complainant on 07.07.2016 is illegal and contemptuous. It is further argued that since the complainant died on 07.05.2016 itself, the question of obtaining her signatures and thumb impressions in open Court on 07.07.2016 does not arise and the IO and LWs.2 and 3 might have impersonated some one to the deceased—complainant and on that ground also the charge sheet is vitiated by fraud.

11) On a careful scrutiny of the entire record, it must be held the above argument is untenable. The chronology of events are that IO filed Petition under Section 311A Cr.P.C. before the trial Court on 18.04.2015 to secure the signatures and thumb impressions of the complainant and A1, A3 to A5 for referring to the expert. The petitioners filed their objections and the trial Court in its order dated 30.06.2015 allowed the said petition and posted the matter to 07.07.2015 for appearance of the complainant and A1, A3 to A5 for securing the signatures and thumb impressions. Challenging the said order the petitioners/A1, A3 to A5 filed CrI.R.C.No.1333 of 2015 before this Court. The copy of the docket proceedings in C.C.No.439 of 2017 filed by the parties would show that in the meanwhile on 07.07.2015 complainant was present

¹ (2014) 3 SCC 389

before the trial Court and accused were absent and the Court permitted the IO to obtain signatures and thumb impressions of the complainant and posted the matter to 21.07.2015. So, the signatures and thumb impressions of the complainant were obtained on 07.07.2015 but not on 07.07.2016 as mentioned in the charge sheet as well as in the expert's report. It is purely a typographical mistake. Therefore, the death of complainant on 07.05.2016 has no impact on the proceedings. Hence, the argument that IO and LWs.2 and 3 might have impersonated some one to give signatures and thumb impressions in the open Court cannot be appreciated. Now, coming to the other part of argument, the order in Crl.R.C.No.1333 of 2015 dated 09.07.2015 reads thus:

“The impugned order passed by the trial Court directing the petitioners to give their specimen signatures is not sustainable under law in view of the proviso under Section 311-A Cr.P.C.

The revision is allowed accordingly setting aside the impugned order dated 30.6.2015 on the file of Additional Junior Civil Judge, Mangalagiri in CFR No.3071 of 2015 in Crime No.56 of 2015.”

This order should be understood with reference to Section 311-A Cr.P.C. and hence the said section is extracted below:

“If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting;

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

This Section upholds the power of a Magistrate to direct any person including an accused person to give specimen signatures and handwriting for the purpose of any investigation or proceedings under the Code. The proviso to Section says that no order shall be made under this section unless the person at some time been arrested in connection with such investigation or proceeding. Section 311-A has been inserted in the Cr.P.C. as per Cr.P.C. (Amendment) Act, 2005 w.e.f. 23.06.2006, on the analogy of Section 5 of the Identification of Prisoners Act, 1989. While the main Section says the Court has power to direct any person including the accused, the proviso illustrates that the order shall not be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding. Needless to emphasize that the word '*person*' used in the proviso is with reference to accused in the main section but not others. Therefore, in a given case, the Court may have to obtain the specimen signatures and handwriting of not only accused in that case but also the complainant. Since the question of arrest of the complainant at some time in connection with such investigation or proceeding does not arise, such arrest in the proviso, in my view, shall be referred to the accused in the main case. The order in CrI.R.C.No.1333 of 2015 which is extracted supra seems to have been made in that context only. That is why in penultimate para of the order this Court observed that the impugned order passed by the trial Court directing the petitioners (**Emphasis supplied**) to give their specimen signatures is not sustainable under law in view of the proviso under Section 311-A Cr.P.C. It was because the petitioners who were accused in that case were not arrested earlier. In my

considered view, this order cannot be referred to the complainant. Therefore, the operative portion of the order shall be understood to have its application in respect of the accused in the case who were the petitioners in CrI.R.C.No.1333 of 2015. Hence, trial Court cannot be carped. Even assuming that by virtue of order in CrI.R.C.No.1333 of 2015 the consequent proceedings of obtaining specimen signatures and thumb impressions of the complainant and referring them to the expert and his rendering report are vitiated, still the charge sheet and cognizance taken by the trial Court cannot be quashed. It must be noted, for establishing the forgery and impersonation, the IO regarded expert's opinion only as a piece of evidence and not as be all and end all. The charge sheet would show that he based his findings on other evidence also. For instance, a perusal of 161 Cr.P.C. statements of the witnesses would show that all of them clinchingly stated that the accused have forged the gift deed by impersonating A4 as the complainant. LW8—Denepudi Mohana Brahma Kanka Ratnakar who is said to be document writer in his statement clearly stated that all the accused went to his shop and A2 herself prepared a gift deed and during the course of their conversation he could understand that A4 who is the mother of A2 acted as the mother of A1 and signed the gift deed by impersonating the complainant. LW10—who is the stamp vendor also stated in similar lines. Of course, the veracity of prosecution witnesses including LWs.8 and 10 has to be tested only after full fledged trial. What is germane here is, apart from the expert's report there is other evidence on record, basing on which the IO filed charge sheet. Therefore, at this stage the petitioners/accused cannot seek for quashment of proceedings in view of

strong *prima facie* case against them, as such, they have to face the trial and vindicate their defence.

12) In the result, this Criminal Petition is dismissed with the direction that trial Court shall proceed with the case uninfluenced by observations made in this order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 17.08.2018
Murthy

U. DURGA PRASAD RAO, J

