

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.2203 of 2011

ORDER:

This petition under Section 482 of Cr.P.C. is filed by accused No.2 seeking to quash the proceedings against him in Crime No.15 of 2011 on the file of Savalyapuram Police Station, Guntur District.

2. The contention of the petitioner-A.2 is that he has not committed any offence much less the offence under Section 468 and 420 IPC and that he has been falsely implicated in the crime. In the complaint, there is no allegation that the petitioner has forged any document so as to attract an offence under Section 468 IPC and that the forgery must be committed in respect of any document for the purpose of cheating, but in the this case, there is no allegation regarding forgery of any document either by the petitioner or his brother. Further there is no allegation that the petitioner and his brother, who are accused, induced the de facto complainant to deliver his property and that there is no allegation that he delivered any property basing on such inducement. The dispute is purely civil in nature and therefore, registration of the crime against the petitioner is an abuse of process of law.

3. On the other hand, the learned counsel appearing for the second respondent-complainant and the learned Assistant Public Prosecutor contended that specific overt acts are attributed to the petitioner in the complaint and that there is no ground to interfere with the impugned proceedings.

4. Heard the learned counsel for the petitioner, learned Assistant Public Prosecutor for first respondent and learned counsel

for the second respondent. Perused the material available on record.

5. Now the point that arises for consideration in this petition is:-
“whether there is any *prima facie* material to prosecute the petitioner for the alleged offences?”

6. As seen from the record, M.Govinda Rajulu-second respondent, who is the complainant, submitted a typed report to the police on 18.02.2011 alleging that the petitioner and his brother with a mala fide intention to grab the land of the complainant, brought into existence the registered settlement deed dated 27.7.2009 and basing on the said complaint, a case was registered in Crime No.15 of 2011 for the offences punishable under Sections 468, 420 r/w 34 IPC against the petitioner and his brother.

7. A copy of registered settlement deed dated 27.7.2009 executed by K.Subbarao in favour of the petitioner herein, is filed along with the material papers. He also filed a copy of gift deed dated 27.7.2009, which shows that K.Subbarao executed the deed in favour of petitioner, who is none other than the younger brother of the executant stating that he is alienating the property in favour of the petitioner out of love and affection. In the said settlement deed dated 27.7.2009, the subject-land is described at item No.4 i.e. 92.1 sq.yds. out of Ac.1.50 cents in D.No.262 of Velpuri village. In the complaint, there is specific assertion that the maternal grandmother of the complainant by name Konduru Veeramma purchased a piece of house site of 262 sq.yds. out of Ac.14.30 cents in D.No.270 from Bhasavayya and others in the year 1983; that after the death of Veeramma, the mother of the complainant acquired right, title and possession by inheritance and enjoyed the

same by raising a thatched house. The vendees executed a sale deed bearing No.3957/2005 dated 10.10.2005 in respect of the said site in favour of the complainant and his brother-Purnaiah. While so, Kandimalla Subbarao, with a mala fide intention of cheating, executed a registered settlement deed No.4285/2009 dated 27.7.2009 in respect of the said property in favour of his brother Kandimalla Lakshminarayana (petitioner herein) and basing on that, they are trying to occupy the said property. It is further alleged that the petitioner and his brother manipulated the Government records. When they questioned, the petitioner and his brother threatened them with dire consequences.

8. It is brought to the notice of this Court, earlier the brother of the petitioner, who is other accused in the crime, filed CrI.P.No.2531 of 2011 seeking to quash the proceedings. This Court disposed of the said petition on 22.3.2011 and though not inclined to interfere with the impugned proceedings, directed the police to investigate the matter and file final report without arresting the petitioner therein and also directed the petitioner therein to cooperate with the investigating agency to give his hand-writing or signature. By referring the said order, now, the learned counsel for the petitioner requests that an appropriate direction may be issued to the trial Court so that personal presence of petitioner herein may be dispensed with and he may be granted exemption from appearance.

9. Dealing with a similar request, the Apex Court in **Madhumilan Syntex Ltd and others v. Union of India and Another** (AIR 2007 SC 1481), observed at para No.53 as under:

“53.In our opinion, it would not be appropriate to issue such direction to the Court. We have, however, no doubt that if such a prayer is made by the appellants, the Court would consider the prayer in its proper perspective and will pass an appropriate order. If personal presence of appellant Nos.2-4 is not necessary, the Court would grant exemption on such terms and conditions as it would think appropriate.”

10. In view of the above, I am of the considered view that it is not proper to issue such a direction as sought for by the learned counsel for the petitioner. Considering the facts and circumstances discussed above, and in view of the specific overt acts attributed to the petitioner, I find prima facie material to prosecute the petitioner for the alleged offences. There is nothing to suggest any abuse of process of Court and prejudice that is caused to the petitioner.

11. In the result, the Criminal Petition is dismissed. The interim stay granted by this Court on 11.03.2011 in CrI.P.M.P.No.2244 of 2011 shall stand vacated.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

27th February 2018
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