

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.9809 of 2018

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A.1 & A.4, for grant of anticipatory bail in Crime No.347 of 2018 of Dundigal Police Station, Cyberabad Commissionerate, registered for the offences punishable under Sections 409, 420, 465, 468 & 471 of I.P.C.

2. Heard the submissions of Sri V.Pattabhi, learned counsel for the petitioners/A.1 & A.4, the learned Additional Public Prosecutor for the State of Telangana representing the 1st respondent, Sri D.V.Sitarama Murthy, learned senior counsel, appearing for M/s.Indus Law Firm, learned counsel for the respondent No.2 and perused the record.

3. Sri V.Pattabhi, the learned counsel for the petitioners/A.1 & A.4 would submit that the petitioner/A.1 executed two sale deeds, viz., 10063/2018 and 10064/2018 on 05.05.2018 in favour of A.2 and A.3 in this crime, basing on a General Power of Attorney executed by the de-facto complainant on 17.11.2009. There is specific mention in the General Power of Attorney, dated 17.11.2009 that the petitioner/A.1 was given absolute power to sell the subject property in full or in part and also to receive the sale consideration. Therefore, execution and registration of the aforementioned sale deeds in respect of the subject property by the petitioner/A.1 in favour of A.2 & A.3 would not constitute any

offence as alleged. As the de-facto complainant and her husband are residing in USA, the petitioners/A.1 & A.4 were managing the subject property and they contested several rounds of litigation. The allegation that the de-facto complainant sent Whatsapp messages cancelling the GPA, dated 17.11.2009, executed by her in favour of the petitioner/A.1 is of no consequence. The de-facto complainant explicitly instructed the petitioner/A.1 to proceed with the sale of the subject property. The GPA, dated 17.11.2009, was not cancelled and hence, execution and registration of the aforementioned sale deeds in respect of the subject property by the petitioners/A.1 & A.4 in favour of A.2 & A.3 cannot be faulted. In fact, the de-facto complainant and her husband have no authority to own and possess agricultural land in India, as they are Non Resident Indians. When a notice was issued under Section 41A of Cr.P.C. to the petitioners/A.1 & A.4, they gave an elaborate reply to the police concerned. Further, the dispute between the parties to the litigation is purely civil in nature. The de-facto complainant has executed a Will deed in favour of two daughters and the petitioner/A.1 bequeathing the subject property. Due to differences in the family, a false case is foisted against the petitioners/A.1 & A.4 and ultimately prayed to allow the application.

4. On the other hand, Sri D.V.Sitarama Murthy, learned senior counsel appearing for the 2nd respondent/de-facto complainant would submit that in spite of sending Whatsapp messages by the de-facto complainant to the petitioner/A.1 instructing her not to sell and register the subject land and addressing a letter to the

Sub-Registrar concerned informing about the cancellation of GPA, dated 17.11.2009, executed by her and her husband in favour of the petitioner/A.1, the petitioners/A.1 & A.4 executed the two registered sale deeds alienating the subject property in favour of A.2 & A.3 for a sale consideration of about Rs.12 crores. The said sale consideration amount was not accounted for by the petitioners/A.1 & A.4. Learned senior counsel also submits that the signature and thumb impression of the vendors (de facto complainant and her husband) required in a form under Section 32A of the Registration Act were forged by the petitioners/A.1 and A.4. Copies of the registered sale deeds obtained by her reveals the same. The petitioner/A.4 is also equally responsible for the registration of the sale deeds. He subscribed his signatures as a witness to the registration of two sale deeds. All these acts of the petitioners/A.1 & A.4 do constitute offences punishable under Sections 409, 420, 465, 468 & 471 of I.P.C. and ultimately prayed to dismiss the application.

5. The learned Additional Public Prosecutor for the State of Telangana representing the 1st respondent-State supported the contentions made by the learned senior counsel appearing for the 2nd respondent/de-facto complainant and contended that even after the de-facto complainant sending Whatsapp messages to the petitioner/A.1 cancelling the GPAs, dated 17.11.2009, the petitioners/A.1 & A.4 deceived the de-facto complainant and her husband by executing the two registered sale deeds in favour of A.2 and A.3 and ultimately prayed to dismiss the application.

6. In view of the above rival contentions, the point that arises for determination in this Criminal Petition is whether the petitioners/A.1 & A.4 are entitled for grant of anticipatory bail under Section 438 of Cr.P.C.

7. It is not in dispute that the de-facto complainant and her husband are Non Resident Indians. Whether they are entitled to possess agricultural land in India as on the date of purchase of the subject property by them under registered sale deed Nos.9464/2000 and 9465/2000 is required to be dealt with under appropriate law. It cannot be a ground to the petitioners/A.1 & A.4 to seek bail under Section 438 of Cr.P.C.

8. It is apt to refer a decision of the Hon'ble Apex Court in Shri Gurubaksh Singh Sibbia and others vs. State of Punjab¹, wherein a Constitution Bench of the Apex Court held thus:

“The question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. Therefore, the High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on

¹ (1980) 2 SCC 565

considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code. The judicial discretion granted under Section 438 should not be read down by reading into the statute conditions that are not to be found therein. The courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful...”

9. Admittedly, the subject property belonging to the de-facto complainant and her husband was sold by the petitioners/A.1 & A.4 in favour of A.2 & A.3 on 05.05.2018 under two registered sale deed Nos.10063/2018 and 10064/2018. The sale consideration mentioned in the sale deed No.10063/2018 is Rs.6,16,27,500/- and the sale consideration mentioned in the sale deed No.10064/2018 is Rs.6,23,70,000/-. As per the said sale deeds, the total sale consideration was deposited in the account of the de-facto complainant by the purchasers, i.e., A.2 and A.3. It is alleged that though the said two sale deeds were registered on 05.05.2018, the sale consideration had not been paid to the original owners of the subject property (the de-facto complainant and her husband) till date. Further, there are Whatsapp messages sent by the de-facto complainant through her phone refraining the petitioner/A.1 from executing the registered sale deeds in favour of A.2 and A.3. There is also record to show that the de-facto complainant sent a detailed letter to the authorities concerned requesting them not to proceed with the registration of the subject property. Further, there is specific mention in the report received by the police concerned from the de-facto complainant on 04.07.2018 that in spite of informing the petitioner/A.1 not to

proceed with execution and registration of sale deeds with regard to the subject property in favour of A.2 & A.3 and that the de-facto complainant and her husband are contemplating to cancel the GPAs dated 17.11.2009 executed by them in favour of the petitioner/A.1, the subject property was sold under two different sale deeds mentioned above in favour of A.2 and A.3. Further, the details of sale transactions entered into between the petitioners/A.1 & A.4 and A.2 & A.3 were not communicated to the de-facto complainant and her husband. As per the material placed on record, the photo, thumb impressions and the signatures of the de facto complainant and her husband are finding place as part of the registered sale deed. The specific case of the prosecution is that the de facto complainant and her husband did not visit India on the date of registration of the sale deeds, nor they have subscribed their signatures and thumb impressions on the form required under Section 32A of the Registration Act. In such a case, it establishes that the form required under Section 32A of the Registration Act is fabricated for the purpose of registration of two sale deeds. There is also specific mention in the report lodged with the police that on 08.04.2018, the de facto complainant sent message and also a PDF file, wherein she stated that the GPA executed in favour of the de facto complainant was cancelled. The sale consideration received by the petitioners/A.1 and A.4, i.e., Rs.12 Crores, even till date not accounted. There are also other grave and specific allegations against these petitioners/A.1 and A.4 with regard to the alleged fraudulent sale and registration of sale deed in favour of A.2 and A.3. Under these circumstances, the allegations leveled against the petitioners/A.1 and A.4 constitute offences under Sections 409,

420, 465, 468 and 471 I.P.C. Release of the petitioners/A.1 and A.4 on bail under Section 438 Cr.P.C. would hinder the investigation and they would indulge in influencing the witness and winning over them and they may create hurdles in the investigation of the case. Under these circumstances, it can be held that there is *prima facie* case against the petitioners/A.1 and A.4. So, they cannot be extended the benefit under Section 438 Cr.P.C. The bail application does not merit consideration and it is liable to be dismissed.

10. In the result, the Criminal Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

14th November, 2018
Bvv

Dr. SHAMEEM AKTHER, J

