

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.10781 OF 2018

ORDER:

The Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners/ A6 to A11 seeking to quash the proceedings in C.C.No.4504 of 2018 on the file of the XI Additional Chief Metropolitan Magistrate, City Civil Court, Secunderabad.

2. The petitioners are A6 to A11 against whom only the learned XI Additional Chief Metropolitan Magistrate, City Civil Court, Secunderabad, taken cognizance for the offence punishable under Section 420 IPC, by order dated 02.08.2018 out of 12 accused shown in the private complaint of the 2nd respondent dated 20.02.2018 in CrI.(S.R.) No.2875 of 2018 referring to 8 or 10 documents and two witnesses including the complainant, by mentioning the offences against 12 accused punishable under Sections 406, 417, 420, 426, 427 r/w Sections 34 and 120-B IPC. The impugment is that the cognizance order of the learned Magistrate supra is no way sustainable. It appears that the private complaint was filed on 20.02.2018, without approaching the police by giving any police complaint as contemplated by Section 154(1) or 154(3) Cr.P.C complaining of the cognizable offences to register crime and thereby, the learned Magistrate returned the same on its sustainability from the prayer under Section 156(3) Cr.P.C sought in the private complaint to refer to police for investigation if not chosen to take cognizance. It appears that subsequently, a police

complaint was given and it was represented in saying police did not choose to take any action on the complaint. It is, there from, the learned Magistrate considered the first option out of the two options sought either to take cognizance or to refer to police for investigation, in choosing to take cognizance from the procedure contemplated by Sections 200 to 204 r/w 190 Cr.P.C having not chosen to refer to the police for investigation under Section 156(3) Cr.P.C.

3. One of the rival contentions is regarding the compliance of the guidelines of the Apex Court in *Priyanka Srivastava v. State of Uttar Pradesh*¹, to clarify the law, from what the Apex Court laid down referring to the earlier expression and reiterated even by a subsequent three-Judge Bench in *Ramdev Food Products Private Limited v. State of Gujarat*², the referring to police for investigation on a cognizable offence by Magistrate under Section 156(3) Cr.P.C is not as a matter of course for there is provision under Section 154(1) or 154(3) Cr.P.C for a cognizable offence to approach the police by giving a written complaint, if not police chosen to record the oral statement and if not received either by recording oral statement or written complaint by police under Section 154(1) Cr.P.C of a cognizable offence despite the guidelines of the Constitution Bench of the Apex Court in *Lalita Kumari v. Government of*

¹ (2016(6) SCC 287)

² [(2016) 6 SCC 439]

Uttar Pradesh³, to complain to the superior police officer i.e. the Superintendent orally like under Section 154(3) Cr.P.C in writing and even police not chosen to take action, then only with proof regarding the compliance with either Section 154(1) or 154(3) Cr.P.C and also filing of an affidavit by the complainant, then to refer if at all by the learned Magistrate as per the guidelines under Section 156(3) Cr.P.C.

4. It is not the case of both that the complaint referred by the learned Magistrate under Section 156(3) Cr.P.C to the police for investigation. Once such is the case, there is no prohibition directly without even approaching the police to file a private complaint to take cognizance by the learned Magistrate either from the expressions or from the wording of Sections 200 to 204 r/ w 190 Cr.P.C. When it is not the law laid down specifically by any observations in the expressions for taking cognizance on a private complaint directly without even approaching the police from the complainant, there is no bar. Thereby, such contention need not be considered from the counsel for the petitioners for the alleged non-sustainability of the cognizance order.

5. Coming to the second contention that there is no offence of cheating even for the learned Magistrate to take cognizance by following procedure under Sections 200 to 202 r/ w 204 and 190 Cr.P.C. against even the petitioners referred as A6 to A11 concerned, in this regard, the factual background necessary to mention in nutshell with reference to the undisputed facts also

³ (2014(2) SCC 1)

borne out by the documents is that the de facto complainant and his brothers and father executed a registered lease deed dated 23.06.2016, total 6 in number where the de facto complainant herein is a third lessor. The registered lease deed duly signed by all the lessors and the lessees respectively and the purpose of the lease is for school building and it also stipulates the rent and whatever the refundable advance among 23 conditions, of which, coming to condition No.10 it speaks from the mutual understanding incorporated as terms of the lease that the lessees have obtained the schedule premises property on lease for running educational institute and that the lessees with the consent of lessors, shall have the right to sub-let or transfer the lease rights in favour of third party only for the purpose of education institute. The said condition No.10 of the written lease mutually arrived and incorporated and executed speaks of if at all there is any sub-lease, it is only by consent of the lessors. It no way stipulates the consent must be in writing. Here, coming to consider whether there was any written consent for the sub-lease in question or not, the sub-lease deed dated 21.08.2017 between the original lessees of the lease deed supra and the sub-lessee educational institution speaks from page No.2 middle that by virtue of clause (10) of the lease deed dated 23.06.2016 incorporated supra, sub-lessors have right to sub-let or transfer the lease rights in favour of third party only for the purpose of educational

institutions and the landlord by name G.Laxmiah Yadav (original lease deed 1st lessor for others among 2 to 6 are his sons) has given his consent vide letter dated 27.10.2016 in terms of said clause No.(10) of the original lease deed, to sub-lessee for entering into sub-lease with Nexgen Educational Trust. It is also important in this regard by coming back to the contents of the original lease deed, dated 23.06.2016, internal page No.3, second para, that original lessor one G.Laxmiah Yadav (supra), who is father of lessors 2 to 5, is the owner of the scheduled property who has been declared as owner by virtue of schedule 'D' in the final decree passed by the III Senior Civil Judge, City Civil Court, Secunderabad, in O.S.No.368 of 1985, for land admeasuring Ac.0.30 guntas, which also registered as document No.1416 of 2009, in the office of the Sub-Registrar Office, Bowenpally, Secunderabad. The 1st lessor is also possessing adjacent properties by virtue of the other registered gift settlement deed No.804/ 2010 admeasuring 1500 yards besides above which totally comes to 5130 Sq.yards, the lessors 2 to 5 joined with 1st lessor, as abundant caution to pass over a perfect title of the schedule property. Neither the de facto complainant nor the other lessors to the lease deed dated 23.06.2016 are disputing the said contents of the lease deed. It is not necessary as to what is nature of the property covered by the partition suit is the coparcenary property in which share allotted as 'D' schedule, if so for the 1st lessor and the sons together it is a

coparcenary interest or it was his self-acquired property that was part of partition 'D' schedule and if so, his sons got only by succession under Section 8 of the Hindu Succession Act, 1956 (for short 'the Act') with reference to Schedule-I of the Act amended from time to time and if so, it will not automatically for the grandson of the original person born even becomes coparcenary but for the third generation, if at all original persons, who succeeded under Section 8 of the Act dies intestate to get for the next generation right by birth as a coparcenary interest and that is a matter if at all to be decided in the civil suit already filed on 02.01.2008 more than two months before filing of the complaint undisputedly for the so called recovery of arrears of the share of the rent of the de facto complainant from lessor among six lessors of the lease deed dated 23.06.2016.

6. Once such is the case, leave about the other offences not taken cognizance need not be gone into as to which of those attract to the facts, even coming to the alleged offence taken cognizance by the impugned order of the learned Chief Metropolitan Magistrate for the offence punishable under Section 420 IPC is concerned, there is nothing to establish any element of cheating from the inception of execution of the sub-lease dated 21.08.2017 once at page No.2 one of the contentions speaks about the compliance of condition No.10 of the original lease deed dated 23.06.2016 of the consent of the

1st lessor obtained and the lease deed dated 23.06.2016 speaks lessors 2 to 6 are impleaded only for an abundant caution for the property belongs to absolute of the 1st lessor being his sons, without referring to the other facts, suffice to say, there is no dishonest to cheat from the inception of the entering into sub-lease, leave about the fact that the matter is predominantly civil in nature, if there is any breach of contract otherwise remedy is left open under civil law, for which already invoked doors by filing a suit in O.S.No.1 of 2018 on the file of the I Additional Chief Judge, City Civil Courts, Secunderabad.

7. Having regard to the above, the Criminal Petition is allowed by quashing the proceedings against the petitioners/ A6 to A11 in C.C.No.4504 of 2018 on the file of the XI Additional Chief Metropolitan Magistrate, City Civil Court, Secunderabad.

8. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:11.12.2018
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