

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11305 of 2018

ORDER:

The petitioner is A.4 among 5 accused in CC.No.20 of 2016 on the file of Chief Metropolitan Magistrate, Hyderabad, which is outcome of private complaint dated 12.11.2013 of the defacto complainant referred to police by the learned Magistrate for investigation in registration of crime No.300 of 2013 dated 26.11.2013 by SHO, Chandrayangutta Police Station, for the offences punishable under Sections 420, 382 & 506 r/w 34 IPC. The police after investigation filed the charge sheet that was taken cognizance by the learned Magistrate supra and impugning the same present quash petition is filed. The 2nd respondent defacto complainant served and acknowledged failed to attend.

2. Heard learned counsel for the petitioner and learned Public Prosecutor representing the State and perused the material on record.

3. The sum and substance of the accusation in the private complaint dated 12.11.2013 in registration of the crime is that A.1 & A.2 are husband and wife, A.3 is their employee, A.4 is family friend of complainant and A.5 is friend of A.1 that A.3 approached the complainant stating A.1 and A.2 are going to sell their house property No.12-1-925/12/3/B of 124.26 square meters of Feel Khana Bagh, Asif Nagar for Rs.6,40,000/-. A.1 to A.5 visited the house of

the complainant and executed the agreement of sale by A.2 attested by A.1 & A.3 and A.1 & A.2 received Rs.4,00,000/- and A.2 also issued receipt for the same attested by A.1 & A.3. On 06.06.2003, A.3 visited complainant and received cash of Rs.1,00,000/- on behalf of A.1 & A.2 and another sum of Rs.40,000/- on 05.05.2004, A.1 to A.3 handed over possession of 2 rooms subsequently on 10.10.2004, A.1 & A.2 sent A.3 with A.4 & A.5 and complainant paid Rs.1,00,000/- and as A.1 to A.5 convinced the complainant that very soon the house will be registered in the name of the complainant after tenant vacating the remaining portion of the house and the remaining portion as and when complainant demanded and later accused Nos.1 to 5 taken time on one pretext or other saying some disputes with tenant. After April 2013 when complainant along with her students Hussain and Ali Bin Garvan contacted A.1 & A.2 of her intention to take legal action A.1 husband of A.2, A.1 to A.3 later on 03.11.2013 visited complainant's house and convinced by A.4 & A.5 to prepare documents for registration of sale and to show the agreement of sale executed by A.2 dated 21.02.2003 and declaration executed by A.1 dated 29.05.2013 and believed them by complainant and showed them the originals and on which A.1 & A.5 on the instigation of others snatched the original documents from the hands of complainant and when they were trying to leave the house of the complainant with great difficulty she and her daughter Fatima could save the

original agreements dated 21.02.2003, but accused ran away with declaration executed by A.1 dated 29.05.2013 by threatening the complainant with dire consequences and she reported to the police and also sent complaint to higher officials through speed post on 09.11.2013 which is with no action, hence to take action.

4. In the private complaint she did not even file any report to police immediately after 03.11.2013 when allegedly accused Nos.1 & 5 at the instigation of others snatched declaration agreement executed by A.1 dated 29.05.2013 and she did not file even copies of the speed post complaints to higher officials dated 09.11.2013, her private complaints was dated 12.11.2013 as referred supra. The investigation done by police by citing 2 witnesses besides LW.1-defacto complainant and the so called Fatima her daughter-LW.2, for LWs.3 to 5 are the IO issued FIR and other IOs investigated and filed charge sheet. Even from the averments referred supra of A.1 to A.5 visited on 03.11.2013 and A.4 & A.5 convinced to prepare sale deed and to show the agreement for sale dated 21.02.2003 and declaration dated 29.05.2013 she believed and showed and as if again in saying A.1 & A.5 allegedly snatched and she could save the agreement dated 21.02.2003 with difficulty and not declaration dated 29.05.2013. The original sale agreement in her repeated saying dated 21.02.2003 for Rs.6,40,000/- and allegedly paid Rs.4,00,000/- it is unknown why she did not choose to ask

for specific performance of contract having paid nearly 2/3rd of the consideration and subsequently allegedly paid by 05.05.2004 another Rs.1,00,000/- + Rs.40,000/- to say only Rs.1,00,000/- remained and that Rs.1,00,000/- again saying paid on 10.10.2004 and is it believable that till filing of the private complaint dated 12.11.2013 without even asking for specific performance she kept quiet. Is it believable that A.1 subsequently executed on 29.05.2013 about 9 years later the so called declaration to make believe even alleged snatching away only that declaration out of the 2 documents A.4 and A.5 pretendly taken to verify to prepare original sale deed. This is nothing but an untrue story and police did not even properly investigate but for the perfunctory investigation with selfsame version of the defacto complainant and her daughter in cause filing and that too if at all to file for any offence of theft in taking the documents by A.1 and A.5 among A.1 to A.5 stated came and not by others even and where the offence of cheating therein much less to rope others and where the offence of criminal intimidation against all.

5. Having regard to the above, the cognizance order of the learned Magistrate is thereby basically unsustainable for the dispute pre-dominantly civil in nature cannot be allowed to continue with criminal flavour to give colour of criminal offence if at all with vain attempt to coerce to give life to so called long lapse and time barred sale agreement of February 2003 in November 2013 by so called private complaint in

registration of crime or to file final report and to take cognizance.

6. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the accused in CC.No.20 of 2016 on the file of Chief Metropolitan Magistrate, Hyderabad, accused is acquitted and the bail bonds of the accused, if any, shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Date: 20.12.2018
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Dr. B. SIVA SANKARA RAO, J

