HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11895 of 2018

ORDER :

The petitioners are A.1 to A.3 (A.3 is father-in-law and A.2 is husband of A.1) in C.C.No.819 of 2017 on the file of the I Addl.Judl.Magistrate of First Class, at Khammam outcome of Cr.No.322 of 2017 registered for the offences punishable u/sec.420,406, 415, 418, 468, 471, 294(b) and 506 read with 34 IPC on the private complaint in S.R.No.3061 of 2017, dt.07.07.2017 of the 2nd respondent-defacto-complainant against the accused persons that was referred by the learned Magistrate to the police for registration of crime and investigation and after filing chargesheet, taken cognizance by the learned Magistrate supra. The said cognizance is the impugnment herein.

2. The police in the course of investigation from the final report, cited 6 witnesses including the defacto-complainant as LW1 and one Ch.Srinivas, the so called elder to the panchayat as LW2, one P. Venkata Ram Mohan, a friend of LW1 as LW3 to corroborate facts and V.Harinadh Babu and Theerala Venkateshwarlu, the panch witnesses as LWs4 and 5 and P.Sarvaiah the Sub Inspector of Police who registered the crime and investigated and filed chargesheet as LW6.

3. The contentions in the quash petition are that from the complaint and police investigation material, no case is made out for any of the offences for the learned Magistrate to take cognizance which is mechanical outcome and there is basically no any role of A.3-father of A.2 in the civil dispute and one Dandu Pullaiah field O.S.No.182 of 2012 against the defacto-complainant before the Addl.District Judge, Khammam and also A.3 Nageshwar Rao filed against the wife of defacto-complainant by name Gunda Vijayalaxmi O.S.No.952 of 2017 and the private complaint filed is

subsequent to the suit adding criminal flavour to the pending civil lis with false allegations. The defacto-complainant did not even produce any record to show that he is an income tax assessee and for payment of 2 crores to any of the petitioners/accused and without basis, there was a sale transaction covered by the agreement dt.23.08.2008 between the defacto-complainant and Dandu Pullaiah covered by O.S.No.182 of 2012. The defacto-complainant entered into agreement dt.14.09.2012 with one A.Guruva Reddy and one P.Ajitha-A.1 herein agreeing to pay the consideration by 16.01.2013 and on 11.01.2013 sale deed was executed in favour of A.Guruva Reddy and P.Ajitha-A.1 through which it is crystallized that the dispute is predominantly civil in nature and thereby sought for quashing the proceedings.

4. Notice served on the 2nd respondent and track record filed in proof of service on 12.11.2018 but failed to attend, hence taken as heard and heard the learned counsel for the petitioners who reiterated the above contentions and the learned Public Prosecutor in opposing the quash petition saying no grounds to quash the cognizance order of the learned Magistrate but for if at all there are any merits ask for discharge by filing such application to decide by the trial Court on own merits, else to frame charges.

5. Heard and perused the material on record.

6. The sum and substance of the accusation in the private complaint referred to police by the learned Magistrate in registration of the crime is that the 3 accused in collusion by conspiring together make believe the complainant, misappropriated the amounts and on 30.12.2013 the accused executed agreement of sale by making to believe of they are owners and having the alienable rights and introduced the complainant with false two agreements for sale and the complainant when came to know and went to

the property found A.1 and A.2 are not owners to execute the agreement with that pretence of ownership, thereby they deliberately introduced and created false documents to cheat the complainant from the beginning in misappropriating the amount in a dubious manner. Later the A.1 on 13.06.2014 undertook to repay the amount and on various dates the complainant given report to police alleging that the accused lured from their acquaintance from the past 5 years that the complainant being nearby resident of Khammam town though of different colonies, in make believing the complainant that the A.1 and A.2 and Guruvareddy are starting real estate business and assured to give 50% share to the complainant in the share of A.1 in the said business from which the complainant given one crore 35lakhs of which some amounts from alienation of his properties and some realized from chits and some by obtaining loans on his house. The sale agreement entered by the complainant with Dandu Pullaiah in respect of 2-26 guntas in the year 2008 but said Pullaiah did not pay balance for which the complainant reported against said Pullaiah to II Town Police, Khammam and accused came to the house of the complainant at that time stating Pullaiah is politically influenced and A.1 and her partner A.Guruva Reddy are ready to face Pullaiah as Pullaiah or Guruva Reddy are residents of same village and if said land is registered in their names they will sell the same and return the advance amount to Dandu Pullaiah and pay the remaining to the complainant in cause executing the sale deed, dt.11.01.2013 and after some period when the complainant required the amount, asked the A.1 then the A.1 through the A.3 gave Rs.10,50,000/- on interest basis by keeping blank documents as security viz; blank signed Non Judicial stamps worth Rs.100/- vide Nos.AV 924686 and 924687, 6 blank signed cheques Nos.6581581 to 6581586 of Andhra Bank, BSC branch Khammam, 6 blank signed pronotes, one blank signed pronote of wife of complainant, original petition papers and original Andhra Bank passbook. The complainant later show the accounts and asked for amount and alienation of lands by him to A.1 and Guruva Reddy but the accused turned deaf year for which the complainant suspected the accused and asked for return of amount or to give security for the amount than for the amount due and payable to the complainant, the A.1 executed the agreement in favour of the complainant dt.30.12.2013 for Ac.1-00 in respect of open site of Ac.1089 sq.yards of Khammam town and the A.2 executed agreement in favour of the complainant but to the sudden surprise of complainant on enquiry he came to know that the A.1 and A.2 are not owners of the said properties and they cheated with that document in causing wrongful loss and sufferance physically and mentally when questioned for which the accused gave false complaint to the Police Rural Khammam against the complainant and later stated ready to settle before the elders and on 13.06.2014, the matter placed before the elders where the A.1 agreed to pay 93lakhs with interest from June, 2013 at 1% per month till payment but accused failed to pay. Thus the A.1 to A.3 cheated and they were even threatening in filthy over phone including threats of danger to his life. Later on 10.05.2017 the A.1 to A.3 came to the house of complainant and abused in filthy and threatened to end him if he chooses to take any action against them and it is the collusion between the A.1 and A.3 with conspiracy in committing the offences and the complainant gave report to Superintendent of Police Khammam and also to the DIG of Police, Warangal and also to Inspector of Police, Khammam Rural in January and October 2015 and March 2017 respectively and to II Town Inspector covered by receipt 56,dt.24.04.2017 finally to ACP, Khammam dt.05.05.2017 for cause return of the amount of Rs.2,13,35,000/- to the complainant from the accused and as accused are influential and police did not take steps, he is constrained to file complaint.

7. So far as the A.3 concerned, it is not even a case of the complainant from the detailed private complaint averments supra of party

to the agreement or cheated in any manner nor party to any forgery or using as genuine any forged document but for a stray allegation of he came along with the A.1 and A.2 and abused or threatened. It clearly shows the A.3 is roped being father of A.2 husband of A.1 in the transaction between the complainant and A.1 with role of A.2 if any. Thus there is nothing to sustain any accusation so far as the A.3 concerned for no transaction between the complainant and the A3 from the police complaint averments. Even therefrom the crime registered and investigated what the police stated is by repetition of the same facts and in fact in the civil suit O.S.No.182 of 2012 between D.Pullaiah and the written statements filed by him on 30.07.2013 which is subsequent to the so called sale deed executed by the complainant to the A.1 and another A.Guruva Reddy dt.11.01.2013 from the alleged say of they can deal with said D.Pullaiah however those facts are silent in the written statement. What all stated in para-17 of the written statement of the defacto-complainant in that suit O.S.No.182 of 2012 are that after issuing legal notice to plaintiff by the defendant, the plaintiff forfeited all rights by virtue of agreement dt.23.08.2008 and the defendant later entered into agreement for sale with one A.Guruva Reddy and P.Ajitha-A.1 dt.14.09.2012 for the suit property to pay the total consideration by 16.01.2013 accordingly on 11.01.2013 he executed sale deed in favour of A.1 and Guruva Reddy. The said version itself cuts the very truth of the present private complaint version dt.19.07.2017 that too filed the private complaint about 4 years after said written statement of him without proper explanation for the delay, leave about there was an undertaking agreement subsequently after said written statement, which was on 13.06.2014 between the complainant and the A.1 for the undertaking to repay the amount and it was settlement through the elders arriving a sum of Rs.93lakhs to pay with interest thereon 1%per month from June,2013 and if at all by virtue of the statement it is a money transaction, leave about if it is also part of deception by A.1 for the offence of cheating only against the A.1 including from any breach of trust in luring the complainant in settling with contract for sale claim between the defacto-complainant and Dandu Pullaiah. Thus it is only A.1 at best liable and there is no basis to implicate A.3 so also A.2.

8. Having regard to the above, the cognizance order of the learned Magistrate so far as against A.3 and A.2 is no way sustainable and liable to be quashed while dismissing the quash petition so far as against the A.1.

9. Having regard to the above, the Criminal Petition is allowed in part quashing the proceedings in C.C.No.819 of 2017 on the file of the I Addl.Judl.Magistrate of First Class, at Khammam outcome of Cr.No.322 of 2017 against the A.2 and A.3 but dismissed the quash petition against the A.1. The A.2 and A.3 are acquitted and their bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:19.12.2018
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