

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11882 of 2017

ORDER :

The petitioners 1 and 2 are A.2 and A.3 of C.C.No.22 of 2017 on the file of XII Addl.Cheif Metropolitan Magistrate, Nampally, Hyderabad, which is outcome of Cr.No.113 of 2016, dt.13.05.2016 for the offences punishable under Sections 420, 468 and 471 read with 120-B IPC. The police after investigation filed chargesheet on 18.01.2017 by citing in all 19 witnesses including the Sub Inspector of Police who issued the First Information Report (for short, 'the FIR') and investigated and filed chargesheet as L.W.19 from which the learned Magistrate taken cognizance for the offences supra and allotted Calander Case Number against the accused persons 1 to 7 by showing A.7 in abscondence. It is out of them, the petitioners are A.2 and A.3.

2. The contentions in the quash petition are that none of the offences that attract from the report of the 2nd respondent including from the investigation the leaned Magistrate to take cognizance even on the face value of the averments accepted in its entirety no offence made out particularly against the petitioners A.2 and A.3, that registration of the crime is only to wreck vengeance against the petitioners to arm-twist them to come to his terms to settle their civil dispute admittedly pending before the Civil Court, that the police final report from the investigation does not disclose even any overt acts against the petitioners. The defacto-complainant and others filed suit pending before the I Senior Civil Judge, Hyderabad for declaration of title and cancellation of registered documents executed in favour of the A.1 to A.3 for the self-same property and the A.3 filed O.S.No.229 of 2016 pending on the file of XVII Addl.Chief Judge, Hyderabad, against

the 2nd respondent/ defacto-complainant for permanent injunction in respect of self-same property with interim orders granted therein still subsisting and thereby sought for quashing the proceedings and reiterated the same even in oral submissions.

3. The learned counsel for the 2nd respondent vis-a-is the learned Public Prosecutor submit that the FIR itself discloses the allegations including against the petitioners and the police after investigation filed final report from which the learned Magistrate rightly taken cognizance by judicial application of mind for the offences in allotting Calander Case number and remedy if any is to file application for discharge to decide on own merits from prosecution material and beyond that the quash petition is filed and originally obtained interim orders that were earlier extended and thereby sought for dismissal of the quash petition.

4. Heard both sides at length and perused the entire material on record.

5. The very report of the defacto-complainant in registration of the crime in nutshell speaks that his father Ganapathi Rao got to his share 360sq.yards site in H.No.11-4-143, 144 and 146 at Red Hills, Bazerghat, Hyderabad. The complainant given one room with open place on rent under oral terms of lease to the A.1-Mohd.Sayeed 4 years ago on rent of Rs.2000/- per month and later the A.1 behind the back of the defacto-complainant and his father, created a fake and forged document as agreement for sale dt.07.08.2010 with ante-date by forging signatures of father of the defacto-complainant in his favour as if father of the defacto-complainant sold part of the house property bearing No.11-4-144 of 69sq.yards open land and one room admeasuring 157 sq.ft.i.e.11.3x13.9 for Rs.9,90,000/- and the A.1 therefrom executed sale deed in favour of his own brother-the A.2-1st petitioner-Mohd.Ayub

on 20.08.2015 and A.2 in turn executed another sale deed in favour of (wife of A.1) A.3-Mrs. Bhanu Begum-the 2nd petitioner. All the A.1 to A.3 supra colluded and conspired in creating sale agreement and by forging signature of father of defacto-complainant and when defacto-complainant recently went to collect rents, A.1-Sayeed stated that his father late Ganapati Rao in his lifetime as if executed sale agreement and thereby he became owner and he need not pay any rents; thus the defacto-complainant seeks action against the A.1 to A.3.

6. The police final report from the investigation shows with reference to the FIR registered from said report which was in fact a private complaint referred to police for investigation under Section 156(3) Cr.P.C. by the learned Magistrate that the defacto-complainant pursuant to the First Information Report contents given statement during investigation and also supplied documents in support of it and the L.Ws. 2 to 4 also corroborated the facts stated by the defacto-complainant and the Investigating Officer visited scene of offence-H.No.11-4-144 supra and examined the tenants therein-L.Ws.5 and 6 and recorded their statements and addressed a letter to L.W.7-Joint Sub Registrar-7, SRO, to furnish information pertaining to stamp paper worth 100 rupees S. No.7322, dt.07.08.2010 and the document No.464045 of Stamp Vendor-L.W.8 taken in the name of A.1-Mohd.Sayeed and to furnish certified copies of Vendor Sale Register and recorded their detailed statements and the L.W.9-Joint Sub Registrar-6, SRO furnished certified copies of document No.1542/ 2013, 3565/ 2015, 5874/ 2015, 633/ 2016 and 1197/ 2016 and the property tax receipt, affidavit, Form 60, submitted by the A.1 at the office of the Joint Sub Registrar-6 during registration of document No.3565/ 2015 also collected by recorded statement of L.W.9 also and L.W.10 Prabhakar Circle-VII Manager of GHMC was examined

and he furnished his report regarding GHMC cash receipt dt.10.07.2016 of A.1-Sayeed with regard to D.No.11-4-144. While so on 06.06.2016 on information about A.1-Sayeed available at his house along with mediators L.Ws.8 and L.W.17-Investigating Officer and L.W.19-Sub Inspector of Police, proceeded and apprehended him and when enquired he made a disclosure which is reduced into writing in the presence of LWs.11 and 12 and from A.1's house from what he disclosed leading to discovery of facts and seized photostat copy of forged, fabricated and created documents of sale agreement, City Civil Court documents and copies of document Nos. 1542/ 2013, 3565/ 2015, 5874/ 2015, 633/ 2016 and 1197 of 2016 SRO, Golkonda under cover of panchanama. The other accused A.4 and A.6 were apprehended in the course of investigation and on enquiry they made their respective disclosures. It shows their complicity to the crime. In the course of further investigation also examined L.Ws. 13 to 15 and recorded their statements by collected certified copies of relevant documents from them and filed application before the learned Chief Metropolitan Magistrate, to call for the original sale agreement from the pending suit before the XVII Senior Civil Judge, CCC, Hyderabad and also collected for that purpose account opening form from Canara Bank, Ahmed Nagar Branch and Original Life Certificates/ Pensioner's Annual verification Certificates from Pension payment office where there are standard signatures of the deceased Ganapati Rao and produced before the Court for the purpose of verification and comparison with the disputed signatures of the deceased on the so called agreement and L.W.16-analyst, after comparison, opined that the person who wrote the red enclosed signatures marked as S1 to S14 did not write the red enclosed signatures marked as Q1 to Q5 on the agreement which shows agreement for sale is

forged and fabricated. It is further mentioned the Investigation discloses of the defacto-complainant's father Ganapati Rao in the year 2010 let out one room to A.1 with open space on rent of Rs.2000/- and A.1 paid for every four months through cheques. In 2013 Ganapati Rao executed gift deed to L.Ws.4 and 8 and L.Ws.1 and 2 (4 daughters) viz; document No.1542/ 2013,dt.25.03.2013 before the SRO, Golkonda, later he died on 18.05.2015 and it is after death of said Ganapati Rao, A.1 hatched a plan to grab the property and approached the A.4 Sayeed Kaleem, Local MIM party worker and also approached A.7 Mohd. Azaruddin to help A.1 to some extent and later A.1 approached the A.4 who introduced the A.5- Vali Ur Rahaman, Practising Advocate at Nampally Criminal Courts created a fake notarized absolute agreement of sale dt.07.08.2010 with forged signature on Ganapati Rao to cheat by showing as if Ganapati Rao sold even the house property D.No.11-4-144 detailed supra for Rs.9,99,000/- and as if received entire consideration and A.5 secured L.W.13-A.1's brother-in-law-Barkutullah in attesting the same and on consultation, the A.6-Mushtaq Ali in the office of the A.5-Lawyer, when showed the forged and fabricated Absolute Agreement of Sale, the notary document to A.6, the A.6 created GHMC tax cash receipt No.15, dt.10.07.2014 in the name of A.1 for the D.No.11-4-144 with assessment number in favour of A.1 and A.1, 4 to 6 submitted at SRO, Golkonda with an affidavit and Form-60 and got the house property registered in the name of A.2-brother of A.1 by registered document No.3565 of 2015, dt.20.08.2015 in continuation of their conspiracy and later on 30.08.2015 made rectification deed to it as document No.5874 of 2015 and A.2 executed another sale deed in favour of A.3-no other than wife of A.1 with document No.633 of 2016 dt.09.02.2016 and again ratification deed dt.8316 No.1197 of 2016 and it is privy of the accused

in fabricating the sale agreement and in fabricating the tax receipt and in creating two sale deeds and also applied municipal tap, electricity meter with those documents. Hence that is the material which shows prima facie accusation against A.2, A.3, they cannot simply claim as if only purchasers bona fide from A.1 by A.2 and from A.2 by A.3 that too in fact A.3 is wife and A.2 is brother of A.1 and the RFL report clearly speak those are forged documents. The mere fact that a civil suit O.S.No.229 of 2016, dt.26.02.2016 pending, it cannot be contended as the matter is purely a civil dispute.

7. Having regard to the above from the prima facie accusation against the petitioners/ A.2 and A.3 along with A.1, leave about others conspiracy, there is nothing to quash the chargesheet and the cognizance order of the learned Magistrate supra.

8. In the result, the Criminal Petition is dismissed. All the defences of the petitioners/ A.2 and A.3 are left open and no way prejudice by virtue of these observations but for to decide on own merits from the proof of the prosecution case if at all charges framed during the trial. Consequently, pending miscellaneous petitions, in this Criminal Petition, shall stand closed.

Date:27.11.2018
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Dr. B.SIVA SANKARA RAO J,