

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.5008 of 2018

ORDER :

The petitioner is A1 in CC.No.10 of 2015 on the file of learned III Additional JFCM, Warangal, taken cognizance for the offences punishable U/s.420, 408, 471, 387 r/w.34 IPC which is in fact outcome of Cr.No.208 of 2013 of Hasanparthy Police station where in view of the civil suit in O.S.35 of 2013 already filed by the first accused as sole plaintiff pending on the file of the VIII Addl.District Judge, Warangal, for specific performance of the contract for sale, which document according *de facto* complainant of the crime supra allegedly forged, filed refer report saying whether the sale agreement dated 03.05.2011 is forged or not is a matter to be decided in the civil court in the suit for specific performance pending and thereby there is no *prima facie* case of the document is a forged in filing a refer report. There from, the *de facto* complainant raised a protest and on the protest petition, by verifying the procedure contemplated by Section 200 to 204 r/w.190 Cr.P.C., the learned Magistrate has taken cognizance for the offences supra against the accused persons and as a private warrant case, put to trial. In the course of trial, after prosecution evidence, including Sub-Registrar, summoned as CW1 and after defence evidence adduced, by marking through defence witness, Exs.D1 & D2, when the matter is at the argument stage, the complainant filed the petition in CrI.M.P.No.498 of 2018 by referring to section 311 Cr.P.C. also instead of Section 45 of Indian Evidence Act, to call for the said document from the civil suit and send the same to the expert and secure opinion to exhibit in the criminal case on behalf of the prosecution and the learned Magistrate by the

impugned order dated 20.03.2018, allowed the application. Same is the subject matter of impugment herein. It is the observation at para 10 of the impugned order of the learned Magistrate that there is a dispute with regard to the signature on the agreement of sale and the petition filed is to call for the document to send to expert for opinion, there by deem fit to allow the petition for no prejudice being caused to accused.

Heard learned counsel for the petitioner and the *de facto* complainant and perused the impugned order and other material on record.

Definitely when after defence evidence and the matter is in progress of arguments, filing a petition by the complainant that too even not to send a document before criminal court to call for from a civil suit and after call for, to send the document to handwriting expert and secure opinion and then to adduce evidence in relation to the opinion, then to consider as part of the evidence in the criminal case, causes a grave prejudice to the accused that was ignored in the observation in para 10 of the impugned order. In fact, if it is the document before the court and from the said evidence on record with reference to the document before the Court if it appears that it is apparently forged one and opinion of the expert is necessary, the Court can from the second limb of Section 31 Cr.P.C., uses the word 'shall' for a just decision of the case exercises the power which is not mere adducing further evidence or calling a witness, but the relief sought is something beyond in calling a document, sending to expert, seeking of opinion, then again liberty to examine the witness and exhibit that and to stall the proceedings at the fag end for pronouncement of judgment. This scope is not considered by the learned

Magistrate in allowing the petition mechanically. The contention that otherwise rights of the complainant have prejudice cannot be accounted for. As had it been any truth, he could have been asked in the defence in the contest of specific performance to take such a course and did not ask. Leave about that. The trial not even commenced therein and in suit for specific performance, it is the duty of the plaintiff to establish including with reference to his contest of agreement is genuine or not.

Practically, the criminal case is in the scenario a premature one for not even a case of there is any finding and once this is the crucial aspect if at all the complainant felt, could have been asked pending trial. Thereby, there are no grounds to allow the petition by the lower Court to take the unnecessary ordeal referred supra which is definitely about the scope of the power U/s.311 Cr.P.C., including any other provision of law with reference to Section 165 of Indian Evidence Act.

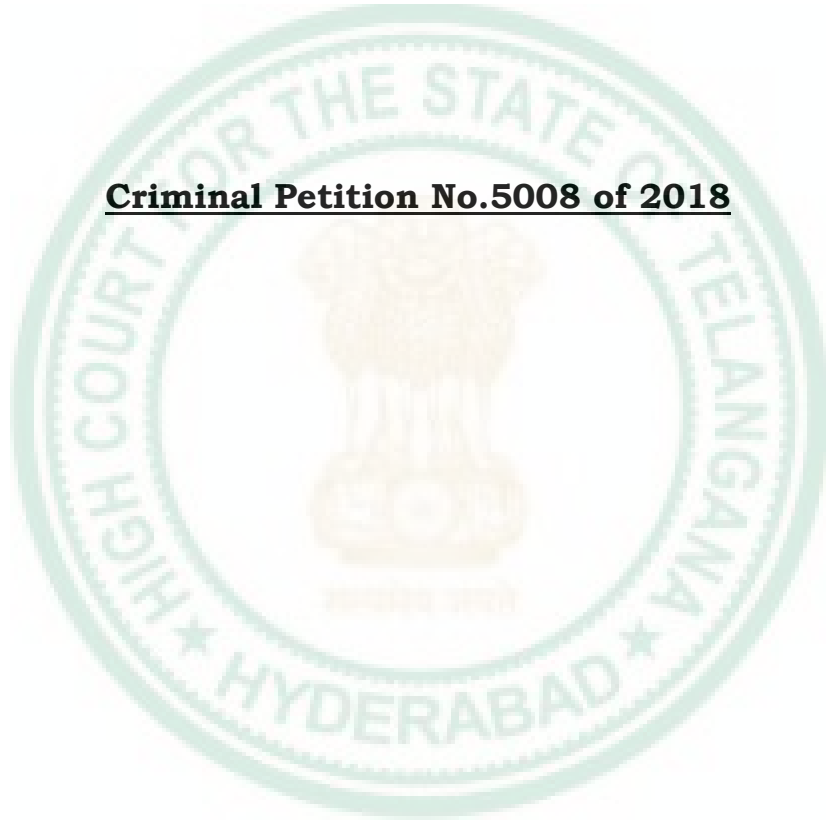
Accordingly, the Criminal Petition is allowed by setting aside the impugned order of the lower Court which is without prejudice to the contest in the criminal case and civil case. For other remedies, left open.

Dr. B. SIVA SANKARA RAO, J

Dt.11.02.2019
ysk

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.5008 of 2018



11th February, 2019

ysk

