

DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No. 8845 of 2018

ORDER :

This Criminal Petition is filed by the Petitioners/A-1 to A-3 under section 482 of Cr.P.C., seeking to quash the Proceedings in C.C.No. 319 of 2017 on the file of the Court of Special Mobile Magistrate, Nizamabad, for the offences punishable under section 420, 406, 323, 506, 120-B of IPC and section 156 [3] Cr.P.C., in Crime No. 172 of 2014 of Nizamabad IV-Town Police Station against A-1 to A-3.

2. The petitioners herein are A-1 to A-3 in C.C.No. 319 of 2017 on the file of the Court of Special Magistrate, Nizamabad, taking cognizance for the offences punishable under section 420, 406, 323, 506, 120-B of IPC which is out-come of the private complaint of the defacto-complainant/second respondent, Sri Y.Santosh, dated 11/04/2014 that was forwarded under section 156 [3] Cr.P.C., by the learned Magistrate with endorsement from which the crime has been registered by the Nizamabad IV-Town Police Station on 12/05/2014 and the alleged occurrence was sale agreement executed on 12/08/2013 by A-1 in favour of the defacto complainant/second respondent for sale consideration of Rs.19,00,000=00 with a stipulation to pay balance sale consideration within fifteen days for the

house of A-1 bearing No. 1-1-49 [NEW] = 1-1-2, admeasuring 250-55 sq. yards situated at Vinayak Nagar, Nizamabad and the further averments in the private complaint in registration of the crime from the order forwarding by the learned Magistrate is that A-1 and A-2 were approached by the complainant pursuant to the agreement, having come to know of a suit is pending respect of the house and when he questioned them, they promised to clear the civil dispute saying that compromise talks are going on and settle the matter amicably and they received the balance sale consideration thereafter and executed sale deed and while so for the notice issued by him they gave an evasive reply not even mentioned about the civil litigation pending against A-1 in the reply and with an intention to cheat, they having received Rs.8,00,000=00 from the complainant covered by the sale agreement supra, sold the same to A-3 who knowingly purchased and thereby they are all liable for the offences of cheating and breach of trust.

3. It is further averred from Paragraph No.6 of the private complaint that on 31/03/2014 at about 11:00 a.m., when the complainant along with LW-2 Sri M. Bhasker, a colleague of him near Phulong cross-roads, A-1 to A-3 came on a motor-bike, abused the complainant in most filthy language and A-2 beat him with hands and they both threatened to kill him if he initiates any civil or criminal proceedings pursuant to the notice issued and A-2 pointed out a knife and threatened to kill if he

goes to Court or Police and makes any demand for the refund of amount and even he went to the IV-Town Police Station, Nizamabad to report and they having any action to lodge the complaint. Hence, the complaint.

4. Surprisingly when did he went and at what time he has submitted the written report if any, as mentioned in Paragraph No.7 that is not filed with the private complaint and that is not adverted to by the learned Magistrate by perusal. Leave it as it is. Even now the defacto-complainant has not filed any such report given to the Police, which is crucial for the alleged occurrence in attributing against A-2 for the alleged offences punishable under section 323, 506 and 120-B of I.P.C. There is no meaning in waiting for eleven days till 11/04/2014 from 31/03/2014 for the alleged occurrence even allegedly given police report for taken no action, there is no explanation for the eleven days in reporting the occurrence, which is crucial. But for that so far as A-2 is concerned, there is no sustainable allegation. A perusal of the record shows from the registration of the crime and Police final report after investigation that was taken cognizance by the Magistrate, the sale agreement was executed by only A-1. A-2 is neither attesor nor party to the transaction from the recitals of the sale agreement. What all alleged of A-1 and A-2 false to clear the civil dispute when complainant questioned A-1 about civil suit pending against her. Even now makes out any offence of cheating or breach of trust against A-2 for what if at all it is A-1 against whom

a civil suit even pending suppressing the same entered the so-called sale agreement with the defacto-complainant. So far as the purchaser A-3 from A-1 by subsequent sale deed concerned cannot be liable for breach of trust or cheating other wise equally victim in the hands of A-1.

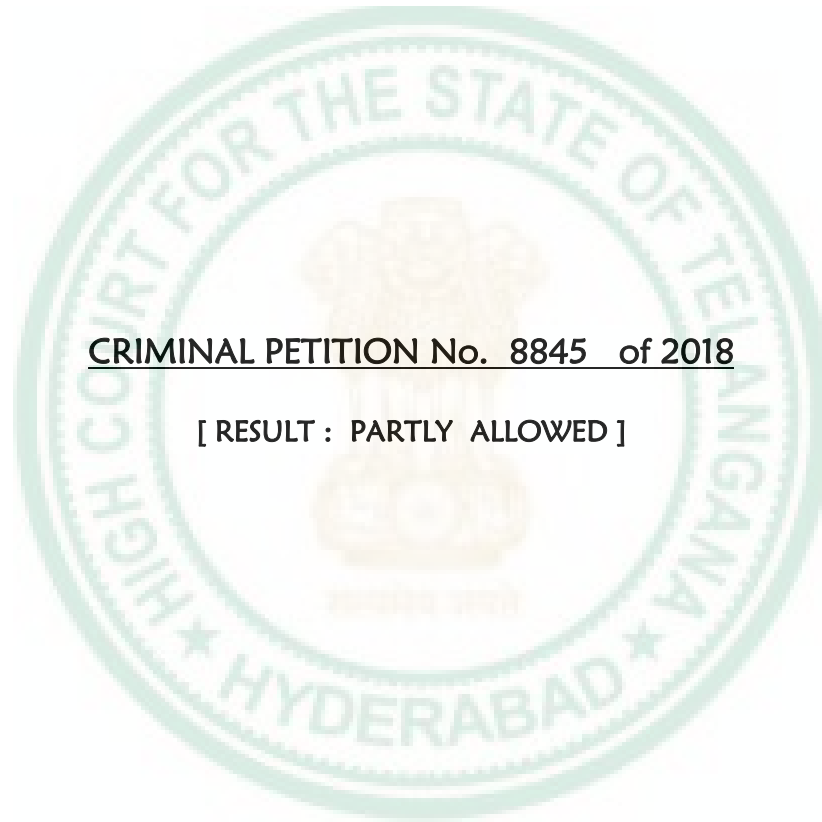
5. Having regard to the above but for against A-1, the cognizance order of the learned Magistrate no-way survive to sustain. Accordingly and in the result, the Criminal Petition is partly allowed by quashing the cognizance order of the learned Magistrate in C.C.No.319 of 2017 pending on the file of the Court of Special Mobile Magistrate, Nizamabad against A-2 and A-3 by dismissing in so far as the cognizance order and pending of the above case against A-1 by left open all defences of that.

6. In the result, the Criminal Petition is partly allowed in respect of A-2 and A-3 and the Proceedings in C.C.No. 319 of 2017 on the file of the Court of Special Mobile Magistrate, Nizamabad, for the offences punishable under section 420, 406, 323, 506, 120-B of IPC and section 156 [3] Cr.P.C., in Crime No. 172 of 2014 of Nizamabad IV-Town Police Station, be and hereby quashed and dismissed against A-1 in all respects.

7. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

DR. JUSTICE B. SIVA SANKARA RAO

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO



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[RESULT : PARTLY ALLOWED]

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