

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.12109 of 2018

ORDER :

The petitioner is the sole accused in C.C.No.2428 of 2017 on the file of the VIII Metropolitan Magistrate, Rajendranagar, which is outcome of Crime No.597 of 2017 of the Station House Officer, RGI Airport Police Station, dated 16.09.2017, for the offences punishable under Sections 427, 448 and 510 IPC. The police after investigation filed the charge sheet against the petitioner as sole accused by citing 9 witnesses including the two Investigating Officers (LWs.8 and 9) and the II Additional Junior Civil Judge, Cyberabad at Rajendranagar (LW.7), who recorded Section 164 Cr.P.C. statement of LW.4-C.Vidyawathi, the mother of the accused and grandmother of the *de facto* complainant besides *de facto* complainant-LW.1, neighbours-LWs.2 and 3 and scene observation panch witnesses-LWs.5 and 6. The learned Magistrate there from taken cognizance for the offences supra besides for the offences punishable under Sections 468 and 471 IPC, from the said police final report mentioning those penal sections. It is the same after appearance of the accused impugment herein in seeking to quash the said cognizance order of the calendar case proceedings supra.

2. Heard learned counsel for the petitioner and learned counsel for the 2nd respondent-*de facto* complainant and the learned Public

Prosecutor, representing the 1st respondent-State, and perused the grounds in the quash petition vis-à-vis the other material on record.

3. So far as the offence under Section 427 IPC taken cognizance by the learned Magistrate concerned, it is on the ground of house building was totally uprooted by dismantling, causing loss of above Rs.50/-, which is the offence of mischief punishable under Section 427 IPC.

4. The contentions of the accused are that he is the absolute owner because the property originally belonged to his father, who executed a testamentary dispossession by Will, dated 10.09.1962 in Urdu bequeathing the property in favour of him and his mother Vidyawathi conferring equal rights to give effect after his death and he died testate consequently his mother by un-registered memorandum of gift, dated 18.04.1996, relinquished or gifted and acknowledged by this document her undivided interest and since then he is absolute owner and the Executive Officer of the Panchayath issued a certificate of the house is standing in his name and he is paying taxes consequent thereto and his mother, the so-called donor of the registered gift No.6856 of 2006, dated 17.05.2006, has no right to execute in favour of the *de facto* complainant and one Baby C.S.Rishika Rama Krishna and another, the joint donees, which recital speaks about delivery of possession even for said donor has no right, never in possession and the so-called gift not acted upon and there is no any offence of

mischief or trespass or forgery or using as genuine a forged document, much less forgery for the purpose of cheating nor any occurrence of any misconduct under intoxication. The police final report speaks the so-called Will and memorandum of gift are not genuine from the investigation. It is the conclusion therefrom of there is a trespass, mischief and forgery for the purpose of cheating and using as genuine a forged document in cause mutating in his name or otherwise. There is nothing to show from the police investigation of the documents sent to handwriting expert including invoking Section 311-A Cr.P.C. with any specimen signatures of accused for comparison to say that it is accused that forged the document to attract the offence under Section 468 IPC even taken the entire other averments of the prosecution as a gospel truth as it is the foundation to attract the offence under Section 468 IPC of it is the accused that forged the documents in question. In the absence of which, Section 468 IPC, much less without showing the said forgery for the purpose of cheating, no way attracts. Thus, there is no application of Section 468 IPC prima facie.

5. Coming to Section 471 IPC, it is using as genuine a document knowingly forged one. The accused filed the tax receipt issued by the Panchayath mutated in his name from that it is using as genuine if at all from the prosecution allegations to face a trial genuine document or not if forged as if genuine. Thereby there are no grounds to quash

the offence under Section 471 IPC but for left open all defences of the petitioner/accused to face trial.

6. From this including from the very tax receipt, there is no offence of trespass in view of the cloud for Investigating Officer could not even collect a single scrap of paper to show the *de facto* complainant and other the so-called registered donees from the grandmother or in physical possession and enjoyment of the property as on the date of the alleged offence from the entire perusal of the charge sheet and investigation material.

7. So far as the offence under Section 510 IPC concerned, there is no sustainable accusation and from the above, once the house is dismantled and even taken for arguments sake the Will relied on by the accused of executed by the father is genuine and not forged one, the so-called unregistered relinquishment deed or gift not for value above Rs.100/- no way conveys any right, much less to claim there under and to that extent, he cannot dismantle the entire house that too without partition that too even taken in possession only on behalf of the other beneficiaries also for not a case of in any civil Court claimed adverse possession and there is any finding in his favour. Thus, prima facie the offence under Section 427 IPC also attracts.

8. Accordingly and in the result, the criminal petition is allowed in part, as from the face value of allegations as discussed supra, no offences under Sections 468, 448 and 510 IPC made out, but for the

offences under Sections 471 and 427 IPC to face trial thereon from any charge, if not framed to frame by the trial Court and put to trial. It is made clear that none of the observations, but for about existence of a *prima facie* material will not prejudice the defence of the petitioner/accused during trial.

Miscellaneous petitions pending, if any, shall stand closed.

14th February 2019

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Dr. B. SIVA SANKARA RAO, J

