

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.13555 of 2018

ORDER:-

The petitioners are accused Nos.1 and 2 in C.C.No.318 of 2018 pending on the file of the Special Mobile Magistrate Court at Karimnagar, which is outcome of the private complaint of the 2nd respondent, dated 10.10.2012, that was referred to the Police under Section 156(3) Cr.P.C., by the learned Additional Judicial Magistrate of First Class, Karimnagar, from which the Police registered Crime No.176 of 2012, dated 06.11.2012, for the offences punishable under Sections 420, 468 and 471 I.P.C. The police, III-Town P.S., after investigation of the said crime, filed charge sheet on 30.04.2013 before the learned Magistrate, who has taken cognizance for the offences supra against the accused Nos.1 and 2. It is the same presently under impugment.

Heard learned Counsel for the petitioners and the learned Public Prosecutor representing 1st respondent/State. The 2nd respondent/complainant did not choose to appear, from the notice returned unclaimed as left is sufficient service, thereby taken as heard and perused the material on record.

The 2nd respondent is the agreement-holder, dated 19.09.2009, from the accused persons for Ac.0.19 $\frac{3}{4}$ guntas of land in Sy.Nos.284/A and AA respectively of Nagunoor village and Panchayat of the then Karimnagar Mandal, for a total consideration of Rs.10,19,750/-. Pursuant to the agreement, a suit for specific performance in O.S.No.172 of 2012 was filed against them by him on 18.09.2012, which is clear from the suit decreed covered by the date of presentation in the decree copy of the judgment and decree, dated 10.11.2017, of the learned III-Additional District Judge, Karimnagar.

No doubt, filing of the suit thereby is prior to the filing of the private complaint and preceded by legal notice, dated 04.09.2012, returned unserved on 18.09.2012. The contention in the private complaint in registration of the crime for the police, final report there from of investigation, vis-à-vis, from the written statement in the suit is in relation to the scope of the petitioner concerned mainly of so-called fabrication of the said sale agreement by interpolation adding '10' before Rs.19,750/- in numerical vis-à-vis with suitable alteration in words. The original sale agreement is supposed to be with the vendee and the plaintiff says as if accused vendors kept with them original document, which is hardly believable. Though such is the argument, in the private complaint at para 3 of page No.2, when the original agreement is with the vendee, the question of tampering the words in the agreement, which is with the vendors, does not arise, leave about how he could file the suit with the original agreement prior to the filing of the private complaint on 18.09.2012 itself, of the agreement, dated 19.02.2009. Leave apart, a perusal of the agreement clearly shows, it is in Telugu typed version by filling some gaps running in two pages. So far as page No.2 is concerned, on the top the total amount of Rs.10,19,750/- is typed in numerical and type written telugu words. When such is the case, it is hardly believable of there is any tampering, for filing of the private complaint, in registration of the crime and police filing of the charge sheet and for the learned Magistrate to take cognizance of the said allegation. Leave as it is even, the dispute is predominantly civil in nature. In the civil Court though written statement filed in the suit, the defendants did not choose to cross-examine the plaintiff and his witness PW.2, one of the attestors to the sale agreement that is exhibited as Ex.A.1 and the finding of the Civil Court saying particularly in the Judgment at

para 8 in answering issue No.1, is that to the said contest of alleged tampering, the defendant did not choose to adduce any evidence, oral or documentary and, having filed the written statement with the contention of such sale agreement is a tampered one with interpolation execution not otherwise in dispute, even plaintiffs denied in their plaint, vis-à-vis, in their evidence, including PW.2-attestor, in saying it is the defendant after corrections signed and not a fabrication, there is no rebuttal evidence against the said plea by the plaintiff in decreeing the suit holding entitled to the specific performance and the agreement is genuine and not tampered. When such is the finding of the civil Court, which is equally binding on the criminal Court, from the scope of Sections 40, 42 and 43 of the Indian Evidence Act, the continuation of the calendar proceedings is nothing but abuse of process of law. Apart from that, there is no basis for filing of the charge sheet and taking of the cognizance for the alleged tampering, which is not correct, even from a perusal to the naked eye, as observed supra of the agreement.

Having regard to the above, and in the result, the criminal petition is allowed quashing the proceedings in C.C.No.318 of 2016 against the petitioners/accused. The bail bonds, if any, stand cancelled.

Dr. B. SIVA SANKARA RAO, J

22nd January, 2019
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