

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2227 of 2019

ORDER:

The present Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners/A-1 to A-4, seeking to quash the proceedings in Crime No.1320 of 2016 of L.B.Nagar Law and Order Police Station, Cyberabad District, which was registered against them for the offences punishable under Sections 420, 467, 468, 471, 477, 511 and 120-B read with 34 of I.P.C.

The facts in issue are that the 2nd respondent/*de facto* complainant filed a private complaint against the petitioners/A-1 to A-4 before the II-Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar, for the aforesaid offences, which was referred to the police under Section 156 (3) of Cr.P.C. Basing on the said reference, the police, L.B.Nagar Law and Order Police Station, registered a case in Crime No.1320 of 2016 for the aforesaid offences and took up investigation.

The allegations in the private complaint in brief, are that the 2nd respondent/*de facto* complainant is the absolute owner and possessor of open plot bearing No.45 admeasuring 126 sq. yards situated in Sy.No.9/1/L, Siris Road, L.B.Nagar Circle, Saroornagar Village & Mandal, Rangareddy District, having purchased the same from its lawful owner by name V.Ajay Kumar S/o. Jangaiah, for valid sale consideration under a notarized Agreement of Sale, dated 04.06.2014

and later she has constructed compound wall around it and she is in peaceful possession and enjoyment of the same. It is also stated that originally one Kanth Prasad and two others were pattadars of the land admeasuring Ac.1.20 gts., and they divided the land into residential plots as per layout and were sold to the prospective purchasers through their Registered General Power of Attorney Holder M.Lingamaiah vide G.P.A.No.96 of 1983, dated 10.06.1983. One B.Raghu had purchased the subject property from the said G.P.A.Holder through a notarized agreement of sale dated 08.10.1984, who in turn sold away the same to V.Ajay Kumar (Vendor of the 2nd respondent/*de facto* complainant). Hence, the 2nd respondent/*de facto* complainant and her predecessors in title have been continuously enjoying peaceful possession of the subject property without interference from any corner whatsoever. While so, the petitioners/A-1 to A-4 without any manner of right interfered with her possession. Thereupon, she instituted a civil suit O.S.No.1259 of 2015 on the file of the II Additional Senior Civil Judge, Rangareddy District. The petitioners/A-1 to A-4 filed counter along with some documents. Later, on verification of the documents, she came to know that the documents filed are forged and fabricated and the said documents were brought into existence only to grab her property. Having come to know of the forgery, collusion and fabrication of documents, she filed the private complaint.

Heard learned Counsel for the petitioners/A-1 to A-4, learned Additional Public Prosecutor, appearing for the 1st respondent-State and the learned Counsel for the 2nd respondent/*de facto* complainant.

Learned Counsel for the petitioners/A-1 to A-4 would submit that the 2nd respondent/*de facto* complainant filed the private complaint under Section 200 of Cr.P.C., without filing of sworn affidavit and, therefore, the complaint is not maintainable and it is an abuse of process of law, in view of the judgment of the Apex Court in *Priyanka Srivatsav v. State of Uttar Pradesh*.. It is also submitted that the 2nd respondent/*de facto* complainant, do not have any *locus standi* to file the private complaint. It is further submitted that according to the contents of the private complaint, the 1st petitioner/A-1 forged the document in his favour, but no document has been filed as such. It is also submitted that after lapse of 35 years the 2nd respondent/*de facto* complainant filed the private complaint only to harass the petitioners. It is further submitted that in the year 1985, the petitioners 3 and 4/A-3 and A-4 have not even born and after 30 years, the 1st petitioner/A-1 executed a gift deed in favour of the 2nd petitioner/A-2, thereafter, the 2nd petitioner/A-2 again executed a gift deed in favour of the 3rd petitioner/A-3 and thereafter 3rd petitioner/A-3 executed a sale deed in favour of the 4th petitioner/A-4 and, therefore, the petitioners 2 to 4 are bona fide purchasers of the plot. In fact, the parents of the 1st petitioner/A-1 purchased open plot admeasuring 126 square yards in Sy.No.9/1/L

from its lawful owners through a notarized agreement of sale and at the time of purchase the age of the 1st petitioner was only 18 years. After the death of the parents of the 1st petitioner/A-1 and the 2nd respondent/*de facto* complainant, some civil disputes arose between them. Meanwhile, the 4th petitioner/ A-4 filed a complaint against T.Srisailam, who is none other than the husband of the 2nd respondent/*de facto* complainant, and others as they trespassed into the house of the petitioners and damaged the compound wall in the year 2015 and the same was numbered as C.C.No.1078 of 2015 on the file of the II-Metropolitan Magistrate, L.B.Nagar. After filing of the said complaint, the 2nd respondent/*de facto* complainant filed O.S.No.1249 of 2015 before the Senior Civil Judge, Ranga Reddy District and the same was pending. It is further submitted that the 2nd respondent/*de facto* complainant is not the owner of the plot nor she is having any right over the said plot. According to her contentions, she purchased the said plot through G.P.A.No.96 of 1983 from one Lingamaiah, but the said G.P.A.No.96 of 1983 was executed in favour of one Sharada Bai, belongs to Koheda Village. Without having G.P.A., the 2nd respondent/*de facto* complainant created notarized affidavit in her favour and basing on the same, she filed a false complaint against the petitioners/A-1 to A-4. It is also submitted that it is settled principles of law that when the civil disputes are pending between the parties, criminal cases are not maintainable. In support of his contentions, the learned Counsel relied on the following judgments of this Court and the Apex Court.

1. *Karnati Bhaskar v. State of Andhra Pradesh*¹
2. *Paramjeet Batra v. State of Uttarakhand and others*²
3. *Rashmi Jain v. State of Uttar Pradesh and another*³

Learned Additional Public Prosecutor appearing for the 1st respondent-State opposed the prayer for quashing of the F.I.R. and submits that the contents of the F.I.R. clearly disclose cognizable offences against the petitioners/A1 to A4 and, therefore, it cannot be quashed.

The 2nd respondent/*de facto* complainant filed counter-affidavit reiterating the contents made in the private complaint. Learned Counsel for the 2nd respondent/*de facto* complainant would submit that on perusal of the entire material available on record including the sworn statement filed along with the complaint, the learned Magistrate took cognizance and referred the matter to the police for investigation and that the petitioners/A-1 to A-4 obtained interim stay by misleading the Court. He further submits that as per the directions of this Court in W.P.No.37947 of 2018 filed by the 2nd respondent/*de facto* complainant, the police took up investigation in Crime No.1320 of 2016, as such the present Criminal Petition is not maintainable and devoid of merits.

In *Paramjeet Batra v. State of Uttarakhand and others*⁴ the Apex Court held as under:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is

¹ (2000) 2 ALD (Cri.) 231

² (2013) 11 SCC 673

³ (2014) 13 SCC 553

⁴ (2013) 11 SCC 673

to be used sparingly and only for the purpose of preventing abuse of the process of any Court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the Court."

In *Devendra v. State of U.P.*⁵, the Apex Court held as under:

"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

In *Joseph Salvaraja vs. State of Gujarat and others*⁶ Hon'ble the Apex Court has held as under:

"Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the Complainant's FIR. Even if the charge sheet had been filed, the learned

⁵ (2009) 7 SCC 495

⁶ (2011) 7 SCC 59

Single Judge could have still examined whether the offences alleged to have been committed by the Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not.

In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil dispute is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.

The Appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the Appellant by the Complainant-Respondent No. 4, and is still subjudice. In the said suit, the Appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by Trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the Appellant and Respondent No. 4 - the Complainant. There was no cause of action to even lodge an FIR against the Appellant as neither the Complainant had to receive the money nor he was in any way instrumental to telecast "GOD TV" in the central areas of Ahmedabad. He appears to be totally a stranger to the same. Appellant's prosecution would only lead to his

harassment and humiliation, which cannot be permitted in accordance with the principles of law.

In *Mohammed Ibrahim and others vs. State of Bihar and another*⁷ Hon'ble the Apex Court has held as under:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.”

In the instant case, a perusal of the material on record would show that the 1st petitioner/A-1 had purchased the subject property from Kantha Prasad and two others through their registered G.P.A.Holder M.Lingamaiah on 15.05.1984 through notarized agreement of sale for a valid sale consideration and since then he is in possession of the said property. In the year 2013, he constructed a compound wall. Further, the 1st petitioner/A-1 executed gift deed in favour of the 2nd petitioner/A-2, thereafter the 2nd petitioner/A-2 executed a gift deed in favour of the 3rd petitioner/A-3 at the time of her marriage and also executed a sale deed in favour of the 4th petitioner/A-4. It is also significant to note that prior to filing of the present private complaint, when the 2nd respondent and his family

⁷ (2009) 8 SCC 751

have been trying to grab away the said property by creating forged and fabricated documents, the 4th petitioner/A-4 filed two complaints against T.Srisailam, who is none other than the husband of the 2nd respondent/*de facto* complainant, and others vide Cr.No.1146 of 2014 under Sections 447, 427, 504 and 506 of I.P.C. and Crime No.943 of 2015 under Sections 447, 427 and 506 read with 34 of I.P.C. and the said cases are pending before the II-Metropolitan Magistrate, Cyberabad. Apart from that at the time of alleged forgery, petitioner Nos.3 and 4/A-3 and A-4 were not even born.

Further, in the private complaint, it is the case of the 2nd respondent/*de facto* complainant that she filed a suit for declaration of title, cancellation of registered sale deed which was executed in favour of the 4th petitioner/A-4 and for grant of perpetual injunction against the petitioners/A-1, A-2 and A-4, as the petitioners/A-1 to A-4 have created false and fabricated documents by forging the signature of G.P.A.holder. *Prima facie* the matter appears to be civil in nature and only to counter blast the cases filed by the 4th petitioner/A-4 against the 2nd respondent/*de facto* complainant and her family members and to wreak vengeance against the petitioners, she filed civil suit and also filed the present private complaint. Whether the petitioners/A-1 to A-4 created fake agreement of sale, dated 15.05.1984 by forging the signature of G.P.A. Holder or not can be decided by the civil Court as the suit for declaration is pending before the civil Court.

Having regard to the principles laid down by the Apex Court in the cases referred to above and in view of the pendency of the civil suit between the parties with regard to the same property, I am of the considered view that continuation of criminal proceedings against the petitioners/A-1 to A-4 would amount to abuse of the process of Court.

For the aforementioned reasons, the Criminal Petition is allowed and the proceedings in Crime No.1320 of 2016 of L.B.Nagar Law and Order Police Station, Cyberabad, against the petitioners/A-1 to A-4 for the offences punishable under Sections 420, 467, 468, 471, 477, 511 and 120-B of I.P.C., are hereby quashed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand dismissed.

07.02.2020
gkv/Gsn

JUSTICE G.SRI DEVI

