

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.13356 of 2013

ORDER:

This petition is filed by the petitioner-accused under Section 482 Cr.P.C. to quash the proceedings in Crime No.194 of 2013 on the file of Machareddy Police Station, Nizamabad District, registered for the offences under Sections 406 & 420 IPC.

2. The respondent No.2 – complainant filed a private complaint before the Judicial Magistrate of First Class, Kamareddy on 25-09-2013 stating that the petitioner was his own brother and he was a legal practitioner in Sircilla town of Karimnagar District, there were no cordial relations between them. Their father left the house on 29-11-2001 without information to anyone and since then he had not returned. The family members searched for him and gave a complaint before Station House Officer, Gambhiraopet on 06-12-2001. Police registered FIR No. 58 of 2002 as “man missing”, but could not trace out his whereabouts. They filed a declaratory suit vide O.S. No.91 of 2009 for declaring that their father was presumed to be dead as his whereabouts were not known for more than seven and half years and the suit was decreed on 21-12-2010. Their father while staying at Narmala village hired locker No.7 at the State Bank of Hyderabad, Machareddy Branch on 25-01-1996 nominating the petitioner (accused) as nominee for the said locker. The petitioner, without the knowledge of the respondent No.2 approached the bank authorities and requested them to permit him to operate the locker by submitting

the decree in O.S. No.91 Of 2009. The bank authorities permitted the petitioner to open the locker on 03-10-2011. The petitioner opened the locker in the presence of two sureties and taken away 50 tulas of gold. The respondent No.2 contended that the petitioner took away the entire gold in the locker depriving him of his legitimate share in it and committed the offences under Sections 406 & 420 IPC.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor. There is no representation for respondent No.2-complainant.

4. The learned counsel for the petitioner submitted that at the instance of the respondent No.2 his children filed a suit vide O.S.No.54 of 2009 on the file of Senior Civil Judge, Sircilla, represented by their mother Varada Lalitha on 20-08-2009 seeking partition and the said suit was dismissed on 27-10-2010. Thereafter in the month of November 2011, the 2nd respondent filed another suit vide O.S.156 of 2011 on the file of Junior Civil Judge, Sircilla, against the petitioner and the bank authorities seeking perpetual injunction restraining the petitioner from operating the bank lockers. The said suit was rejected vide order dated 24-06-2013. While the said suit was pending, the respondent No.2 filed another suit vide O.S. No.26 of 2012 on the file of Senior Civil Judge, Sircilla in the month of February, 2012 against him and his sisters and others seeking partition. The respondent No.2 was harassing him and his married sisters by filing case after case. When the above suit for partition was pending before the competent Civil Court, the respondent No.2 filed

the above complaint only with an intention to harass him. The respondent No.2 did not make any allegations with regard to taking away the gold in any previous cases i.e. O.S. No.54 of 2009, O.S. No.156 of 2011 and O.S. No.26 of 2012. He was making these allegations only after the dismissal of the two suits O.S. No.54 of 2009 and O.S. No.156 of 2011 especially after lapse of more than two years. The complaint filed by the respondent No.2 would amount to abuse of process of law and the same was liable to be quashed.

5. The learned Public Prosecutor opposed the petition.

6. Perused the record. The private complaint filed by the respondent No.2 would itself disclose that the petitioner was the nominee of the bank locker hired by their father. It was also mentioned therein that their father Varada Ramulu handed over the key of the said locker to the petitioner while leaving the house, as such, the petitioner was having dominion over the said locker and the property in it. The respondent No.2 filed O.S. No.156 of 2011 on the file of Junior Civil Judge, Sircilla against the petitioner herein as D1 and the Manager, SBH Machareddy branch, Nizamabad District, as D6 and against others for restraining D1 from operating the lockers, FDs, KVPs lying with D2 to D7 by taking advantage of his nomination as nominee. He had not stated the present allegations of taking away 50 tulas of gold from the locker by the petitioner herein in the said suit which was filed in the month of November, 2011. He alleged in the present complaint about the petitioner operating the said locker on 03-10-2011 and taking away the gold. If the said allegation

was true, the respondent No.2 would not have kept silent without mentioning the same in O.S. No.156 of 2011. The said suit was rejected by the Junior Civil Judge Sircilla as per the orders in IA No.502 of 2012 filed under Order VII Rule 11 CPC to reject the plaint on 24-06-2013. The respondent No. 2 had also failed to mention the said allegations in O.S.26 of 2012 filed by him for partition before the Senior Civil Judge, Sircilla, which was filed subsequently in the month of February, 2012. He had filed the private complaint only in the month of September, 2013 after rejection of plaint vide IA No.502 of 2012 in O.S. No.156 of 2011 by the Junior Civil Judge, Sircilla, on 24-06-2013. Thus, filing the private complaint without making the said allegations in the civil suits filed by him earlier is only an after-thought. His initiation of criminal proceedings and using the criminal proceedings as a means to harass the petitioner cannot be permitted as it would amount to an abuse of process of law.

7. In the result, the Criminal Petition is allowed quashing the proceedings in Crime No.194 of 2013 on the file of Machareddy Police Station of Nizamabad District, registered against the petitioner herein.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

November 30, 2021
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