THE HONOURABLE DR. JUSTICE D. NAGARJUN

CRIMINAL PETITION No.10202 OF 2018

ORDER:

The petitioners/A3 and A4 in C.C.No.54 of 2018 on the file of the I Additional Judicial Magistrate of First Class, Mancherial has filed this petition seeking quashment of charge sheet, cognizance of which was taken against them and other accused for the offence under Sections 120B, 420 and 167 IPC.

2. The facts in brief as per the charge sheet are that the father of the de-facto complainant was having Ac.9.02 guntas in Sy.No.48 of Teegalpahad Shivar and out of which he sold Ac.2.00 of land in favour of A1 in the year 1990. In the year 2013, A1 with the held of A2 to A5/petitioner, who are VRO, Revenue Inspector, Deputy Tahsildar and Tahsildar, has deceitfully without giving any prior intimation or notice to the de-facto complainant, issued patta certificate in respect of Ac.2.09 guntas of land in favour of A1 instead of Ac.2.00. On a complaint given by the de-facto complainant, a case in Crime No.75 of 2016 has been registered for the offence under Section 420 IPC and issued FIR.

3. During the course of investigation, the statements of the brothers of the de-facto complainant were recorded and documents from the Tahsildar and also from the de-facto complainant were secured and filed charge sheet against the petitioners and A1. The trial Court has taken cognizance against the petitioners/A3 and A4 for the offence under Sections 120B , 420 and 167 IPC, whereas against A1 cognizance was taken for the offence under Section 120B and 420 IPC.

4. Aggrieved by the taking of cognizance for the offence under Section 167 IPC, this petition is filed on the following grounds:

The petitioners being officers of the revenue department have discharged their duties and have not committed any offence as alleged by the de-facto complainant. The petitioners have followed the procedure for effecting the mutation of the name of A1 in respect of land purchased by him from the de-facto complainant's father. There is no element of conspiracy as alleged by the de-facto complainant. As per the complaint received from the de-facto complainant, the revenue authorities have rectified the mutation confining the mutation in favour of

A1 to the extent of Ac.2.00 only and deleted Ac.0.09 guntas of land, which was exclusively mutated in favour of A1.

5. Heard both sides and perused the record.

6. Now, the point for determination is whether the charge sheet against the petitioners in C.C.No.54 of 2018 can be quashed?

7. There is no dispute that the father of the de-facto complainant has sold land to an extent of Ac.2.00 guntas in Sy.No.48 in favour of A1 under a simple sale deed in the year 1990. However, since it was a simple sale deed, mutation was not effected. According to the petitioners, petitioner No.1 has filed O.S.No.773 of 1990 on the file of learned District Munsif, Luxettipet for declaration of title in respect of Ac.2.00 of land in Sy.No.48 against respondent No.2 and the same was decreed. Basing on the said decree, A1 has filed an application before the revenue authorities for effecting mutation.

8. It is alleged by the de-facto complainant that though his father has sold only Ac.2.00 guntas in Sy.No.48, the petitioners have conspired together to cause loss to the de-facto complainant

effected mutation in favour of A1 to an extent of Ac.2.09 guntas instead of Ac.2.00 guntas, which was actually purchased by A1. It is alleged by the de-facto complainant that the petitioners being revenue officials have conspired along with A1 and effected mutation. It is alleged that the petitioners, who are the officers of the revenue department, have allegedly not followed procedure before effecting the mutation of Ac.2.09 guntas of land and without giving any notice to the de-facto complainant has clandestinely effected mutation in favour of A1 in respect of Ac.2.09 guntas of land instead of Ac.2.00.

9. Per contra, it is submitted by the learned counsel for the petitioners that though there is a decree in favour of A1 declaring that he is the title owner in respect of Ac.2.00 of land in Sy.No.48, father of the de-facto complainant has exeuted another unregistered sale deed in favour of A1 to an extent of Ac.2.09 guntas, thereby A1 becomes the owner of Ac.2.09 guntas. The revenue authorities have taken Ac.2.00 out of the decree, which was in favour of A1 and also considered the simple sale deed in respect of Ac.0.09 guntas and thereby mutation was effected in favour of A1 for Ac.2.09 guntas. Learned counsel for the petitioner has submitted that the accused have followed the

procedure under the Telangana Rights in Land and Pattedar Passbooks Act 1971 for effecting mutation, notification has been issued by calling for the objections and since no objection was received, the request of A1 to effect mutation in respect of Ac.2.09 guntas was considered.

10. The de-facto complainant has no dispute so far as Ac.2.00 of land, which his father has admittedly sold in favour of A1. However, the objection of the de-facto complainant is for effecting mutation in respect of Ac.0.09 guntas in excess than what his father has sold in favour of A1. It is true that in case if the revenue authorities intend to mutate the name of A1 so far as Ac.2.00 are concerned, since there is a decree in favour of A1 declaring that he is the absolute owner in respect of Ac.2.00, the de-facto complainant cannot raise any dispute. However, the simple sale deed which allegedly executed by the father of the de-facto complainant in favour of A1 was also considered. When an application comes for effecting mutation, if it is a simple sale deed or even in respect of a registered sale deed also, the revenue department is expected to issue notice to the aggrieved person, who is the vendor of the land to ascertain whether the land was

really sold by him in favour of A1 and if so, whether they have any objection for effecting mutation.

11. Once mutation has been effected, if at all the de-facto complainant is of the opinion that the revenue officials have not properly followed the procedure in effecting the mutation, the course left for the aggrieved person, including respondent No.2, is to prefer an appeal before the revenue appellate authorities challenging the mutation effected in favour of A1 in excess of what A1 is entitled to. Even if the de-facto complainant is not able to get the relief, he has also got a right to file a writ petition before this Court for appropriate direction to the revenue authorities. Even otherwise, the de-facto complainant also can file a suit for declaration of title in respect of Ac.09 guntas of land which the revenue department has mutated excessively in favour of A1. However, the de-facto complainant has chosen to file a criminal complaint against the revenue officials.

12. On careful perusal of the complaint and charge sheet, it appears that the de-facto complainant has not alleged any reason as to why the petitioners have conspired against him and in favour of A1. The revenue department basing on their discretion

after following the procedure will be effecting mutation in number of cases. In case if this kind of complaint is allowed to be filed against the revenue officials for every mutation effected by them by an aggrieved person, the Courts will be flooded with criminal cases. The de-facto complainant has got number of remedies to handle the situation. Unless malafides are attributed against the petitioners, the de-facto complainant is not expected to find fault with the revenue officials for effecting mutation. As observed above, nothing is attributed against the revenue officials as to why the petitioners effected mutation against the respondent/de-facto complainant.

13. In **Vijay Kumar Ghai and others vs. The State of West Bengal and others**[1] the Hon'ble Supreme Court held at paragraphs 31 to 36 as under:

> "31. Section 415 IPC defines "cheating" which reads as under:
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> > "**415. *Cheating***.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."
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> The essential ingredients of the offence of cheating are:
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> 1. Deception of any person

[1] (2022) 7 SCC 124

2. (*a*) Fraudulently or dishonestly inducing that person—

(*i*) to deliver any property to any person; or

(*ii*) to consent that any person shall retain any property; or

(*b*) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420 IPC defines "cheating and dishonestly inducing delivery of property" which reads as under:

> "**420.** ***Cheating and dishonestly inducing delivery of property***.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(*i*) The representation made by the person was false.

(*ii*) The accused had prior knowledge that the representation he made was false.

(*iii*) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(*iv*) The act where the accused induced the person to deliver the property or to perform or to abstain from

> any act which the person would have not done or had otherwise committed.
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> 36. As observed and held by this Court in *R.K. Vijayasarathy* v. *Sudha Seetharam* [*R.K. Vijayasarathy* v. *Sudha Seetharam*, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:
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> (*i*) a person must commit the offence of cheating under Section 415; and
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> (*ii*) the person cheated must be dishonestly induced to:
>
> (*a*) deliver property to any person; or
>
> (*b*) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

In order to allege that the petitioners have committed the offence of cheating, the de-facto complainant is expected to allege and that the petitioners have induced the de-facto complainant to deliver the property and such delivery was only on account of deception played by the petitioners.

14. Similarly, so far as the offence under Section 167 IPC is concerned, the de-facto complainant is expected to prove that the petitioners, who are aware of the fact that A1 is not the owner of Ac.0.09 guntas, have with an intention to cause injury to the de-facto complainant intentionally prepared the proceedings and issued the same as if A1 is the owner of the property along with Ac.2.00 of land which is not in dispute.

15. Learned counsel for the petitioners has contended that while issuing proceedings in favour of A1, the revenue officials have gone through the decree passed by the Court in O.S.No.773 of 1990, which is in favour of A1 and also perused the simple sale deed allegedly executed by the father of the de-facto complainant in favour of A1 for Ac.2.09 guntas and it is also submitted that while considering the request of A1 for effecting mutation in respect of Ac.2.09 guntas of land, basing on the decree and also on simple sale deed, a notice was also issued to the de-facto complainant and also issued paper publication, however, the de-facto complainant has not raised any objection.

16. When such is the case, it cannot be alleged that the petitioners have deliberately issued mutation proceedings in respect of Ac.2.09 guntas.

17. Above all, even according to the petitioners, on the complaint of the de-facto complainant, the District Collector has issued proceedings withdrawing the mutation proceedings in respect of Ac.0.09 guntas of land which was in excess of Ac.2.00 of land and revised proceedings were issued confining the mutation only in respect of Ac.2.00. The District Collector also addressed a letter to the Sub-Inspector of Police concerned to

withdraw the case against the officials as the mutation proceedings, which was the subject matter of the issue, was withdrawn and fresh proceedings were issued. Therefore, the police should have refrained from filing a charge sheet against the petitioners after disputed proceedings in respect of mutation have already been withdrawn prior to filing of the charge sheet.

18. Considering the discussion above, the petitioners have made out a case that even in case if the proceedings are continued to be tried in the trial Court, ultimately, the case against them would be ended in acquittal. Therefore, continuation of proceedings would amount to abuse of process of law.

19. In the result, the criminal petition is allowed and the proceedings against the petitioners/A3 and A4 in C.C.No.54 of 2018 on the file of I Additional Judicial Magistrate of First Class, Mancherial are hereby quashed.

Miscellaneous petitions, if any, shall stand closed.

Dr. D. NAGARJUN, J

Date: 11.10.2022
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