

Telangana High Court

Ashok Kumar Agarwal And 3 Others vs The State Of Telangana.,Rep.,Pp ... on 11 March, 2022

Bench: G.Radha Rani

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.9486 of 2017

ORDER:

This petition is filed by the petitioners-A3 to A6 under Section 482 Cr.P.C. to quash the proceedings in Crime No.242 of 2017 on the file of Saifabad Police Station registered against them for the offences under Sections 406, 420, 506 read with 34 IPC.

2. The case of the petitioners in brief was that the 2nd respondent lodged a private complaint before Chief Metropolitan Magistrate, Hyderabad submitting that she was the lawful owner of the property bearing Municipal No.6-1-1060 and 6-1-1060 D, Ground floor admeasuring 700 Sq.feet (Shop No.5 and 6) situated at Hafeez Complex, Lakdikapool, Hyderabad having acquired the same by way of registered settlement deed bearing document No.763/2015 dated 19-2-2015 executed by her father Mohd. Ashraf S/o.Late Mohd. Zakeriya. She submitted that the said property was given on long lease by her grandfather Late Mohd. Zakeriya for a period of 9 years in 2003 to Ashok Kumar (petitioner No.

1), who sub-let the said property to Kaleshwari Travels, against the terms of lease, wherein they were carrying on the business of travel agency and allied services. The said lease expired in 2012. After the death of her grandfather Mohd. Zakeriya, the entire property was devolved upon her father (A1) and his Dr.GRR,J brother (A2) and their sister Akhter Jahan, who was residing in USA. The property was not put to partition. Both A1 and A2 created charges upon the property. A1 offered Shop No.5 and 6, admeasuring each 350 Sq.feet at ground floor and asked the complainant to pay a sum of Rs.20.00 lakhs towards sale price for the said shops. The complainant with great difficulty arranged the said amount and paid to A1 under a receipt drafted on Rs.100/- non-Judicial Stamp paper on 22-10-2014. A2 and her husband stood as witnesses. A1 promised to execute a conveyance deed but postponed and after a lot of persuasion executed a settlement deed on 19-2-2015 in favour of the complainant on her assurance to pay a further sum of Rs.10.00 lakhs to A3 to get him vacated. A1 and A2 assured that they negotiated the terms and conditions with A3 and that A3 was willing to vacate the same if he was paid Rs.10.00 lakhs. Accordingly the complainant obtained a demand draft for Rs.10.00 lakhs on 11-2-2016 and handed over the same to A1. After a couple of months, A1 returned the demand draft of Rs.10.00 lakhs asking her to approach the court to evict the tenants as A3 turned away from his promise of vacating the shops. Having no other option, the complainant got issued a notice under Section 106 of the Transfer of Property Act on 25-4-2016 to A3 to quit and handover the shops. A3 got issued a reply notice stating that he entered into an agreement to purchase the shops from A1, A2 and Akhter Jahan, but the column of signature of Akhter Jahan was Dr.GRR,J left blank. The complainant submitted that she initiated proceedings against A3 by filing OS No.1234 of 2016 on the file of II Additional Senior Civil Judge, CCC, Hyderabad. While filing written statement, A3 disclosed that A1 and A2 executed a registered sale deed bearing Document

No.5393 and 5394 of 2016 dated 19-10-2016 in his favour. The complainant was put in total darkness about the transaction. The receipt submitted by A3 would show that she also received the sale proceeds. The signature found upon the indenture (receipt) dated 31-5-2016 did not belong to the complainant. A3 forged the signature in collusion with A1 and A2 to cause wrongful loss to the complainant. A1 and A2, being the father and paternal uncle, who ought to have protected her interest involved themselves in cheating, forgery. The purchasers submitted those documents in the court together with the alleged receipt as genuine, to usurp her own property. The said complaint was referred to the Police Saifabad and it was registered as Crime No.242 of 2017 under Section 406, 420, 506 read with 34 IPC.

3. Heard the learned counsel for the petitioners and the learned counsel for the 2nd respondent - complainant.

4. The learned counsel for the petitioners submitted that they were not aware of A1 executing gift settlement deed in favour of the complainant prior to Dr.GRR,J execution of the sale deed. They paid the entire sale consideration to purchase the property. The complainant filed OS No.789 of 2017 on the file of XXV Additional Chief Judge, CCC, Hyderabad for cancellation of sale deed. The petitioners were contesting the case by filing a counter claim. The complainant signed on the receipt along with A1 and A2 while receiving the amount. However, the said fact could be looked into in the civil proceedings. There were no allegations against the petitioners before this court. The present complaint was filed by the complainant in collusion with A1 and A2. All the family members were playing drama only to extract money from the petitioners. The complaint was nothing but an abuse of process of law and prayed to quash the proceedings against the petitioners herein.

5. The learned counsel for the 2nd respondent submitted that the petitioners No.1 to 4 in collusion with A1 and A2 brought into existence two registered sale deeds. The alleged agreement of sale was said to be executed in the year 2014 but it would show that it was executed in the month of January, 2015. The stamp paper was purchased on 11-4-2011 by A1. The copy of which was earlier sent, was not having any cheque number, etc., on page No.3 of the agreement. Later on, the same was filled with pen. In the witness column, the earlier agreement would show that some other person signed as witness No.1. Upon the said second copy of the agreement, one Mr. Mohd. Junaid Ali was Dr.GRR,J purported to have signed as witness No.1. In fact the page Nos.2, 3 and 4 were changed. Even the font style was also changed. The petitioners involved themselves into cheating and forgery and approached the court with unclean hands. After the respondent No.2 categorically stated in her notice dated 25-4-2016 that a registered settlement deed was executed in her favour, after receipt of the same, the petitioners brought into existence the sale deed in their favour. All the petitioners arrayed as accused colluded with A1 and A2 and brought into existence the alleged sale deeds to cause wrongful loss to the 2nd respondent. The 2nd respondent submitted all the documents before the SHO. The 2nd respondent made out a prima facie case against the petitioners and prayed to dismiss the petition.

6. Perused the record. Admittedly the 1st petitioner was a tenant of the property shown as shop No.5 and 6 forming part of premises bearing Municipal No.6-1-1060 and 1-1-1060/D in GF admeasuring 704 Sq.feet (Shop No.5 and 6) situated at M/s. Hafeez Complex, Lakadikapool, Hyderabad. The

lease deed filed would show that it was executed in August, 2003 by Mohd. Zakeriya in favour of the 1st petitioner - A3 for a period of 9 years on a monthly lease amount of Rs.8,000/- with an enhancement of 5% every year on the existing rent. Clause No.10 of the lease agreement also would show that the lessee should not sub-let the leased premises nor shall induct any third person into the Dr.GRR,J leased premises. The said clause was alleged to have been violated by the 1st petitioner.

The 2nd respondent issued a notice to the 1st petitioner - A3 on 25-4-2016 stating that she became the owner of the said property by virtue of registered gift settlement deed. She also filed the registered settlement deed document No.763 of 2015 to show that it was executed by her father on 19-2-2015.

7. The 1st petitioner got issued a reply notice through his counsel on 4-5-2016 stating that A1 and A2 along with Akhtar Jahan entered into an agreement of sale with his client in January, 2015 for a sale consideration of Rs.34.00 lakhs and his client paid Rs.4.00 lakhs by cash and Rs.4.00 lakhs by cheque and he was ready to pay the balance sale consideration.

8. The sale deed was alleged to be executed for Shop No. E (5) (bearing No. 6-1-1060/E) in GF in the building known as Hafeez Complex admeasuring 374 Sq.feet by A1 and A2 on 19-10-2016 in favour of Petitioners 2 and 3 - A4 and A5. It would show that the property was sold for a total sale consideration of Rs.13,09,000/-. A1 and A2 stated that they were the absolute owners of the said property, though the gift settlement deed (19-2-2015) would show that A1 executed gift in favour of his daughter i.e. the 2nd respondent by the said date. Thus, these documents would prima facie disclose that A1 and A2 made a false Dr.GRR,J representation to the 1st petitioner that they were absolute owners of the said property.

9. Another sale deed for the shop bearing No.F(6) Municipal No.6-1- 1060/F in GF admeasuring 368 Sq.feet was executed by A1 and A2 on 19-10- 2016 in favour of the petitioners No.1 and 4 - A3 and A6 for a total sale consideration of Rs.12,88,000/-.

10. Even if the sale consideration in both the sale deeds is considered, it would not come to the total of Rs.34.00 lakhs as mentioned in the agreement of sale.

11. The stamp paper on which the agreement of sale was executed by A1 and A2 in favour of petitioners No.1 and 2 was purchased in the name of A1 in the year 2011 and it was executed in the month of January 2015 without any date. There was no signature of Smt.Akhtar Jahan though she was shown as one of the vendors. Only one witness signed on the said document. The agreement of sale which was shown as served on the petitioner was dated 10-1-2015 and the name of the witness appeared to be different from that of the earlier document. The name of the witness was shown as Mohd. Junaid Ali. Thus, there appears to be discrepancy in the documents served upon the petitioner through court from the documents which were filed in the court.

Dr.GRR,J

12. The receipt dated 31-5-2016 would show the name of the 2nd respondent also as receiving an amount of Rs.4,50,000/- in addition to the amount of Rs.9,20,000/- paid on 10-1-2015. The 2nd respondent was alleging that it was not her signature and the same was forged.

13. Thus, all these discrepancies would show that there is a need to investigate the case by the police as the 2nd respondent was alleging collusion between A1 and A2, and A3 to A6 and that they filed forged documents before the court and committed the offences of cheating and forgery.

14. The learned counsel for the petitioners relied upon the judgment of the Hon'ble Apex court in Md. Ibrahim and others v. State of Bihar and another<sup>1</sup> wherein it was held that:

"12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him.

The second is that he may be dishonestly or fraudulently claiming it to 2009 (2) ALD (CrL.) 775 (SC) Dr.GRR,J be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to

deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser Dr.GRR,J under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code.

15. But the facts of the present case differ from the facts of the above case. Hence the above judgment is not applicable to the present facts. He also relied upon the judgment of the Hon'ble Apex court in Sardar Ali Khan Vs State of Uttar Pradesh<sup>2</sup>, wherein the facts were disclosed in para No.9 as under:

9. At the outset it is to be noted that the appellant has purchased the plot in question by sale deed dated 29th December,1993 which was registered on 5th January, 1994. The father of the 2nd respondent died on 3rd December, 1997. Though the registered sale deed is of 1994, the 2nd respondent filed suit which is pending in O.S. No.160 of 2008, only in the year 2008 seeking cancellation of sale deed alleging that the aforesaid sale deed was got executed by the appellant and his brother, by making use of the acquaintance with his father, in a false and fraudulent manner. There is no allegation of impersonation or forgery of signatures in the suit filed by the 2nd respondent. It is the case of the appellant that even the 2nd respondent is a signatory to the sale deed as a witness. Though the suit was filed in the year 2008, the 2nd respondent has chosen to file the criminal complaint only in the year 2012 alleging forgery and impersonation. With regard to the validity of the sale deed, matter is seized up before the competent civil court and it is for the civil court to decide whether any fraud is played or not by the appellant, on the late father of the 2nd respondent for obtaining the sale deed. When the very same issue is seized up before the civil court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offence under Sections 418, 419, 420, 467, 468 and 471 IPC. Although, it is contended by the learned counsel for the 2nd respondent that complaint filed is not barred by limitation but at the same time it appears, there is no

reason for lodging private complaint in the year 2012. The sale deed on which basis the title and possession is claimed by the appellant was registered on 5th January, 1994, suit itself is filed nearly after 14 years. Even after filing of the suit on 24 th August, 2008 there is further about 4 years' delay in filing the criminal complaint against the appellant herein. Allowing the proceedings to go on against the CrI.A.No 161 of 2020 Dr.GRR,J appellant who is stated to be about 87 years, in the above set of facts, is nothing but abuse of the process. It is to be noted that there is no allegation of impersonation and forgery of the signatures in the suit filed by the 2nd respondent. In any event, when the suit filed by the 2nd respondent for cancellation of sale deed, is pending consideration before the competent court of law, the 2nd respondent cannot pursue his complaint in criminal proceedings by improving his case. Having regard to serious factual disputes which are of civil nature, for which civil suits are pending, allowing the 2nd respondent to pursue his complaint in criminal proceedings is nothing but abuse of the process of law. For the aforesaid reasons we are of the considered view that the criminal proceedings are fit to be quashed by allowing this appeal.

16. The above facts also would disclose that there was no allegation of impersonation or forgery of signature in the suit filed by the 2nd respondent in the said case. The above facts were different from the present case. The complaint prima facie would disclose the allegations of cheating and forgery which need to be investigated. Hence, it is considered not a fit case to quash the proceedings against the petitioners.

17. In the result, the petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed.

\_\_\_\_\_ Dr. G. RADHA RANI, J March 11, 2022 KTL