

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 2303 CF 2019

Between:

1. Ratanlal Agarwal, S/o. Late Mahaveer Pershad Agarwal, Aged about 64 years, R/o.10-3-3/28, Behind Chenoy Nursing Home, E.Marredpally, Secunderabad. (A-3)
2. Devakinandan Agarwal, S/o. Late Mahaveer Pershad Agarwal, Aged about 57 years, R/o. Flat No.102, West Marredpally, Secunderabad. (A-4)
3. Shyma Sunder Agarwal, S/o. Late Mahaveer Pershad Agarwal, Aged about 53 years, R/o. H.No.1-8-229/13/8, Sri Sai Palace, 1st Floor, Natrajan Colony, Opp. Airlines Towers, PG Road, Secunderabad. (A-5)
4. Guru Govind Agarwal, Late Mahaveer Pershad Agarwal, Aged about 49 years, R/o. 10-3-3/28, E 2A, E, Marredpally, Secunderabad. (A-6)
5. Gopichand Agarwal, S/o. Late Mahaveer Pershad Agarwal, Aged about 44 years, R/o. H.Nce.5-1-766, Koti Circle, Opp. Andhra Bank, Koti, Hyderabad. (A-7)

...Petitioners/Accused

AND

1. Smt. Devarapalli Indira, W/o. Late Krishna, Aged about 64 years, R/o. 3-3-630, 2nd Floor, General Bazar, Secunderabad.
2. The State of Telangana, Represented by its Public Prosecutor, High Court for the State of Telangana, at Hyderabad.

....Respondents/Complainant

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash all further proceedings in C.C. No. 1332 of 2014 on the file of XI Additional Chief Metropolitan Magistrate, Hyderabad, in the interest of justice.

I.A. NO: 1 OF 2019

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings including the appearance of the petitioner in C.C. No. 1332 of 2014 on the file of XI Additional Chief Metropolitan Magistrate, Hyderabad, pending disposal of the above Criminal Petition, in the interest of justice.

I.A. NO: 1 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend interim stay granted in CrI.P.No. 2303 of 2019 dated.07-01-2022, pending before this Hon'ble Court, in the interest of Justice.

I.A. NO: 2 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to extend interim stay granted in CrI.P.No. 2303 of 2019 dated.28-02-2022, pending before this Hon'ble Court, in the interest of Justice.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri T. S. Anirudh Reddy, Advocate for the Petitioners and the Additional Public Prosecutor on behalf of the Respondent No.2 and of the Respondent No.1 not appearing in person or by Advocate.

The Court made the following: ORDER

1

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No. 2303 OF 2019

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking to quash the proceedings against the petitioners who are arrayed as Accused Nos.3 to 7 in C.C.No.1332 of 2014 on the file of XI Additional Chief Metropolitan Magistrate at Secunderabad, Hyderabad registered for the offences punishable under Sections 420, 468, 471, 466 read with 34 of Indian Penal Code (for short 'IPC').

2. Heard the learned counsel for the petitioners/Accused Nos.3 to 7 and the learned Additional Public Prosecutor for the respondent-State and perused the record.

3. The Station House Officer, Mahankali Police Station filed charge sheet against the petitioners and others for the offences as stated above.

4. The case of the prosecution in brief is that a fabricated order of the Supreme Court dated 21.03.2005 was received by LW1/*de facto* complainant through post which was an interim stay granted by the Hon'ble Supreme Court in SLP (Civil) No. 6892 of 2005.

5. On receipt of the said order, the *de facto* complainant grew suspicious and caused enquiry and she came to know that the said order was a fabricated one and no such orders were pronounced by the Hon'ble Supreme Court on that day as it was a holiday.

6. A complaint was lodged with the Mahankali Police Station on 28.08.2007 and the statement of *de facto* complainant/LW1 under Section 161 of Cr.P.C. was recorded on 28.08.2014. In the said complaint, the *de facto* complainant has narrated that there are owner tenant disputes and the Court has passed orders directing the eviction of tenants. However, in the month of April, 2005, *de facto* complainant received an order of the Hon'ble Supreme Court dated 21.03.2005 which was in favour of father of petitioners and others. Accordingly, she engaged the services of the Supreme Court lawyer to defend her case in SLP No.6892 of 2005 and her counsel enquired about the order and informed the complainant that the said order was fabricated and the same was informed to the Hon'ble Supreme Court, which was taken cognizance and ordered enquiry. Upon enquiry, the Registrar General of Supreme Court filed a report stating that the said order was fabricated. On the basis of the said statement, Station House Officer, Mahankali Police Station filed the present charge sheet against the petitioners and others

7. As seen from the investigation, the entire focus of the investigation was to determine the correctness or otherwise of the order. However, no steps were taken by the police to enquire (i) as to who were the persons who fabricated the said order; (ii) Where the order was fabricated or prepared; (iii) Who sent the said order; (iv) Pursuant to the said order what was the benefit that was accrued to these petitioners?

8. Sections 420, 468, 466 and 471 of IPC are extracted:

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.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 3[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

466. Forgery of record of Court or of public register, etc.—
3[Whoever forges a document or an electronic record],
purporting to be a record or proceeding of or in a Court of
Justice, or a register of birth, baptism, marriage or burial,
or a register kept by a public servant as such, or a
certificate or document purporting to be made by a public
servant in his official capacity, or an authority to institute
or defend a suit, or to take any proceedings therein, or to
confess judgment, or a power of attorney, shall be
punished with imprisonment of either description for a
term which may extend to seven years, and shall also be
liable to fine.

1[Explanation.—For the purposes of this section, "register"
includes any list, data or record of any entries maintained
in the electronic form as defined in clause (r) of sub-
section (1) of section 2 of the Information Technology Act,
2000 (21 of 2000).]

471. Using as genuine a forged 1[document or electronic
record].—Whoever fraudulently or dishonestly uses as
genuine any 1[document or electronic record] which he
knows or has reason to believe to be a forged 1[document
or electronic record], shall be punished in the same
manner as if he had forged such 1[document or electronic
record].

9. To attract an offence of cheating under Section 420 of IPC, there has to be a false statement, pursuant to which a person believing such false statement should have been induced to deliver property. There are no such instances which are narrated to attract an offence under Section 420 of IPC.

10. To attract an offence under Section 468 of IPC, it has to be shown that a person has fabricated a document and the said document is a false document as defined under Section 464 of IPC. In the absence of the Investigation Officer identifying as to who was the person, who fabricated the said order, the offence under Section 468 of IPC is not attracted.

11. For attracting an offence under Section 471 of IPC, it has to be proved that the fabricated order was used to defraud having knowledge about the falsity of the document. In the present case, the fabricated order of the Supreme Court was received by post and the *de facto* complainant sent the said order to her counsel in Delhi and her counsel found that the order was incorrect and thereafter proceedings were undertaken and ultimately a report was filed by the Registrar of Supreme Court stating that it is false. The said document being fabricated is not in dispute. However, there is no evidence as

to how these petitioners have used the said document to cheat having knowledge about its falsity. Admittedly, none of these petitioners have produced the document before any authority or even LW1 or claimed any benefit on the basis of said order. Hence, the offence under Section 471 of IPC is not attracted.

12. An offence under Section 466 of IPC is attracted when a Court document is forged. Admittedly, the order dated 21.03.2005 was forged, however the investigation does not reveal as to who was the person that forged the document. For the said reason, none of the ingredients of Section 466 of IPC are attracted.

13. The police have not investigated the case in proper direction. The entire energy was used only for the purpose of establishing that the order which was received in post by the *de facto* complainant was a forged one, however no steps were taken by the Police to identify from where the order has originated, where it was forged or who was the person who had sent the said order. In the absence of any of these aspects being investigated and brought before the Trial Court, the Trial Court cannot proceed on the basis of an assumption of LW1/*de facto* complainant that the document must have been fabricated by these petitioners as they would be benefitted.

14. Though the learned Additional Public Prosecutor submits that the petitioners would be beneficiaries and they are the only persons who would have an advantage, for which reason they have to be prosecuted. With due respect to the Public Prosecutor the Accused can be prosecuted if a prima facie case is made out and convicted by a Criminal Court in the event of case being proven beyond reasonable doubt satisfying the ingredients of the penal provisions and not on the basis of assumption.

15. It is ironical that though the order of the Hon'ble Supreme Court was fabricated, the police have totally failed to establish that these petitioners are complicit in any manner in the fabrication of the said record. The police have proceeded in wrong direction and wasted their energies for seven years in examining the witnesses only to prove that the document is fabricated and absolutely no evidence is collected to connect these petitioners with the said fabrication. The trial on the basis of evidence available is a futile attempt and waste of time of the Criminal Court. For the said reasons, the prosecution against these petitioners cannot be sustained.

16. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/Accused Nos.3 to 7 in C.C.No.1332 of 2014 on the file of XI Additional Chief Metropolitan Magistrate at Secunderabad, Hyderabad are hereby quashed.

Miscellaneous Petitions, pending if any, shall stand closed.

SD/- L. SIVA PARVATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice K.Surender
(For His Lordships kind perusal)

To,

1. The XI Additional Chief Metropolitan Magistrate, at Secunderabad, Hyderabad District.
 2. The Station House Officer, Mahankali Police Station, Hyderabad District.
 3. Two CCs to the Additional Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
 4. 2 LR Copies
 5. The Under Secretary, Union of India Ministry of law, Justice and Company Affairs, New Delhi.
 6. The Secretary Advocates Association (TG) Library, High Court Buildings Hyderabad
 7. One CC to Sri. T. S. Anirudh Reddy, Advocate [OPUC]
 8. Two CD Copies
- MMK

Ch

HIGH COURT

KSJ

DATED:02/11/2022

ORDER

CRLP.No.2303 of 2019



ALLOWING THE CRIMINAL PETITION

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[Signature]
23/11/2022