

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.1046 OF 2018

Between:

Konda Srinivas and others

... Petitioners

And

The State of Telangana

Through Public Prosecutor and another. ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :04.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No.1046 of 2018

% Dated 04.01.2024

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Respondents/Complainants

! Counsel for the Petitioners: Sri A.Prabhakar Rao

^ Counsel for the Respondents: Addl. Public Prosecutor for R1
Sri T.P.Acharya for R2.

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.1046 of 2018****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioners/A1 to 4 & 6 in C.C.No.159 of 2017 on the file of VI Additional Junior First Class Magistrate at Warangal for the offences under Sections 420, 468, 471 and 406 of IPC.

2. The 2nd respondent/*defacto* complainant filed a complaint alleging that her husband Konda Linga Murthy has two brothers namely Konda Srinivas (A1), Konda Krishna Murthy (not accused). He has two sisters namely Bura Swathi (A3) and Konda Srilakshmi (A4)/4th petitioner. A2 is the mother. There is family property to an extent of Acs.2.23 guntas. However, after the death of father of A1, the properties were not distributed. On 25.06.2014, A1 created a fake passbook by separating 0.35 guntas from Acs.2.23 guntas and with the help of A2, who is the mother of A1, sisters A3 and A4, sold the said 0.35 guntas for sale consideration of Rs.13,13,000/- to A9. Having come to know about the

transaction, the *defacto* complainant obtained documents. They came to know that fake patta documents and fake passbooks were prepared. On the basis of the said false documents, A1 sold the joint property for which reason, the *defacto* complainant filed complaint seeking investigation.

3. On the basis of the said complaint, the police filed charge sheet against the accused 1 to 12. It is alleged in the charge sheet that illegal acts were committed by A1 to A5 by fabricating documents. A6, A7, attested as witnesses in the sale deed of A9 and the remaining land of Ac.1.28 guntas was sold to A10 and A11 on 25.06.2014. For the said transaction, A7 and A8 attested as witnesses.

4. Learned counsel appearing for the petitioners would submit that on the very same allegations, the husband of the *defacto* complainant namely Konda Linga Murthy, who is the brother of A1 filed a private complaint on 08.10.2014. The said complaint was registered as S.R.No.5416 of 2014. By order dated 21.01.2015, the VI Additional Judicial Magistrate of First Class at Warangal dismissed the complaint as there were

no grounds to proceed against the accused. Thereafter, questioning the said orders, Criminal Revision was filed vide CrI.R.P.No.35 of 2015 before the Sessions Court. During pendency of the said revision, the 2nd respondent, who is the wife of Konda Linga Murthy filed complaint regarding the very same transactions, which the VI JFCM Court, Warangal dismissed as not maintainable. The present complaint was filed on 28.08.2015. On 21.01.2015 complaint was dismissed and dismissal of the complaint was confirmed by the learned Sessions Judge on 14.12.2017. While the revision was pending, police filed charge sheet on 05.04.2016. There cannot be two complaints on the very same transactions and the disputes are purely civil in nature.

5. On the other hand, learned counsel appearing for the 2nd respondent/ *defacto* complainant would submit that earlier complaint did not specify regarding fabrication of patta No.674, pass book No.81864 and the other patta No.675, pass book no.81862. Both the pattas were issued by Mandal Revenue Officer, Warangal Mandal. However, on the

application filed under Right to Information Act, the office of the Tahsildar, Warangal Mandal has given reply on 24.07.2015 stating that the details of the said patta pass books were not available in 1-B Form 7, 17 records during inspection. Since the earlier complaint filed by the husband did not specify regarding the pass books, present complaint can be maintained and the accused have to be tried for fabrication of documents.

6. Learned Magistrate, on the basis of complaint filed by the husband of the 2nd respondent found that there are disputes in between the brothers and family members which were pending adjudication. High Court had granted order of injunction in ASMP No.1051 of 2007 in AS No.279 of 2007 filed by A5 and other legal heirs of Konda Lingaiah restraining the legal heirs from alienating the subject land until further orders. In case, the land was alienated, it would amount to violation of the orders passed by High Court in A.S.No.279 of 2007 for which remedy lies elsewhere. Further, the aggrieved

have to seek cancellation of the documents or declaration to the effect that the documents were null and void.

7. In the criminal revision filed, the learned Sessions Judge found that there are disputes between legal heirs, which are subject matter of partition suit O.S.No.16 of 2000. Aggrieved by the orders in the suit, A.S.No.279 of 2007 was filed. Learned Sessions Judge further discussed that sale deed, agreement of sale-cum- GPA and registered GPA, all dated 12.06.2014 were executed by A5 in respect of the suit land. High Court had restrained the legal heirs from alienating the subject land until further orders. The learned Sessions Judge further concurred with the finding of the learned Magistrate that the parties should have approached High Court or the Civil Court seeking cancellation of the documents executed by A1 to A5.

8. The accusation by the 2nd respondent regarding the sale of land by the petitioners herein was already filed before the Magistrate Court by the husband of the 2nd respondent. A

reading of the orders in the Criminal Revision Petition No.35 of 2015, which was decided on 14.12.2017, it was not brought to the notice of the learned Sessions Judge regarding the complaint filed by the 2nd respondent and consequent charge sheet.

9. In the complaint filed by the husband of the 2nd respondent, both the registered sale deeds dated 12.06.2014 and also the orders passed by this Court in ASMP No.1051 of 2007 were filed.

10. The sale deeds which were registered were already filed in the private complaint and considered by the learned Magistrate and also the learned Sessions Judge. On the very same allegations during the pendency of adjudication of the complaint filed by the 2nd respondent's husband, separate complaint regarding the very same transactions cannot be filed. The 2nd respondent has suppressed the fact that her husband had filed a criminal complaint before the Court which was pending adjudication at the time of lodging the complaint by her. Regarding the very same transactions, the

husband was prosecuting the private complaint by filing Revision petition before the Sessions Court. The police also during investigation did not refer to the pending adjudication before the learned Sessions Judge regarding the complaint filed by the 2nd respondent's husband.

11. To attract an offence of cheating, there should be an act of deception. The person so deceived should have delivered property being induced by the act of deception. To attract an offence under Section 468 of IPC, a person should have made false documents with an intention to cause damage or support any claim or to commit fraud. Section 471 of IPC is for using a fabricated document with a fraudulent, dishonest intention, as genuine, having knowledge about the falsity of the document.

12. Admittedly, disputes are regarding the family joint property. Restraint orders were passed by this Court from alienating the property. Alienation, if any, would be void for the reason of the restraint orders passed by this Court, subject to outcome of the Appeal. As already found by the learned Magistrate and the learned Sessions Judge, the sale

transactions dated 25.06.2014, disposing the subject land under two different sale deeds on the very same day, the 2nd respondent and her husband ought to have taken steps to cancel the said documents.

13. For the reasons best known to the 2nd respondent and also her husband, two different complaints were filed and the 2nd respondent had not referred to the pending adjudication of the criminal complaint filed by her husband before the Sessions Court. Likewise, the 2nd respondent's husband also did not bring to the notice of the learned Sessions Judge regarding criminal complaint filed by the wife about the very same sale transactions.

14. The argument of the learned counsel for the 2nd respondent that the patta pass books numbers which were mentioned in the sale deeds were not mentioned in the complaint of the 2nd respondent's husband, for which reason, separate complaints can be maintained, is incorrect. When the sale documents which are genesis of the Criminal complaint filed by husband of 2nd respondent were considered by the

Magistrate and Sessions Court, filing separate complaint on the ground that numbers of pass books mentioned in the sale deeds are incorrect, is not tenable.

15. For suppression of material information before the Sessions Court and present police complaint, further also for the reason of none of the ingredients of any of the penal provisions being made out, this Court is inclined to quash the proceedings against the petitioners.

16. In the result, the proceedings against the petitioners/A1 to A4 & A6 in C.C.No.159 of 2017 on the file of VI Additional Junior First Class Magistrate at Warangal, are hereby quashed.

17. Criminal Petition is allowed.

K.SURENDER, J

Date : 04.01.2024

Note: L.R.copy to be marked

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1046 of 2018
Dt.04.01.2024

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