

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

Criminal Petition No.3362 OF 2019

Between:

Smt.Kavitha Goel & others ... Petitioner/Accused Nos.2 & 3

And

1.The State of Telangana ...Respondent
2.Sunil Kumar Agarwal ...Respondent/De-facto Complainant

Criminal Petition No.3371 OF 2019

Between:

Aditya Goel ...Petitioner/Accused No.1

And

1.The State of Telangana ...Respondent
2.Sunil Kumar Agarwal ...Respondent/De-facto Complainant

DATE OF JUDGMENT PRONOUNCE : 25.09.2023

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. 3362 of 2019

% Dated 25.09.2023

Smt. Kavitha Goel & others ... Petitioner/Accused
Nos.2&3

And

\$ 1.The State of Telangana ...Respondent
2.Sunil Kumar Agarwal ...Respondent/De-facto
Complainant

+ CRL.P. No. 3371 of 2019

Aditya Goel ...Petitioner/Accused No.1

And

\$ 1.The State of Telangana ...Respondent
2.Sunil Kumar Agarwal ...Respondent/De-facto
Complainant

! Counsel for the Petitioner: Sri Sharad Sanghi

^ Counsel for the Respondents: Public Prosecutor for R1
Sri N.Sridhar for R2

THE HONOURABLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION Nos.3362 & 3371 OF 2019

COMMON ORDER:

1. Criminal Petition No.3362 of 2019 is filed by A2 & A3 and Criminal Petition No.3371 of 2019 is filed by A1 seeking to quash the proceedings in C.C.No.109 of 2018 on the file of XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. Since petitioners are accused in the same case, they are being heard together and disposed by way of this Common Order.

2. The case of the 2nd respondent/defacto complainant is that the petitioners are directors of M/s.Tanmayee Industries Limited. The company availed credit facilities by mortgaging a property as collateral security for availing loan and the total outstanding stands at Rs.37,79,55,282/-. The grievance of the 2nd respondent/defacto complainant is that the petitioners/A1 to A3, who are the Directors of the Company signed on the documents on which the signatures of the defacto complainant were forged and mortgaged the landed property with the Bank, of which he is also the owner. The property was the combined property of A1 and the complainant, to an extent of Acs.2.26 ½ guntas in Mahabubnagar District.

3. The case of the petitioners is that the defacto complainant had in fact gone to the Bank and handed over the documents and also signed in the concerned forms and register. Further, A2 and A3 are sleeping directors of the company and have never taken part in the day to day affairs of the company. The charge sheet does not reflect that any of these petitioners have fabricated the signatures of the defacto complainant.

4. Learned counsel further submits that filing charge sheet is barred under Sections 34 and 35 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act of 2002') as well as Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act of 1993'). In the event of forgery, the same can only be adjudicated before the Debts Recovery Tribunal and there cannot be any criminal investigation in the case. Dispute is pending before the DRT. There is a possibility that the 2nd respondent and petitioners colluded to cheat the bank and 2nd respondent filed the false complaint.

5. On the other hand, learned counsel appearing on behalf of the respondents would submit that opinion of the hand writing

expert clearly shows that the alleged signatures of the complainant in the mortgage documents were not his.

6. The Sections 34 and 35 of the Act of 2002 reads as follows:

“34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

7. Section 18 of the Act of 1993 reads as follows:

“18. Bar of Jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.”

8. Both the provisions do not in any manner restrict criminal prosecution for the offences of cheating and forgery.

9. The signatures are denied by the 2nd respondent and also the hand writing expert’s opinion reflects that the signatures on the loan documents are not that of the defacto complainant.

10. Admittedly, the petitioners are signatories to the loan documents. It is not necessary that these petitioners should have fabricated the signatures of the defacto complainant. Using a forged

document and filing it before the Bank is an offence punishable under Section 471 of IPC. Since the petitioners are also signatories to the alleged fabricated loan documents, the proceedings against the petitioners cannot be quashed. There are no merits in these petitions. If it discloses during trial that the 2nd respondent in collusion with the petitioners has filed a false complaint and in fact he went to the bank and signed the disputed documents in the bank, the prosecution can take appropriate steps under section 319 CRPC to proceed against the 2nd respondent.

11. Accordingly, both the Criminal Petitions are dismissed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 25.09.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.3362 and 3371 of 2019

Dt. 25.09.2023

kvs