

(2014) 10 AP CK 0051

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 860 of 2014

Guniganti Ravinder Rao

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 2(d), 239, 240
Foreign Exchange Management Act, 1999 — Section 36
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 417, 420
Prevention of Corruption Act, 1988 — Section 19, 7
Registration Act, 1908 — Section 32, 32(a), 73, 82, 83

Citation : (2015) 1 ALD(Cri) 816 : (2016) 1 ALT(Cri) 235

Hon'ble Judges : Dr. B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : T.L. Nayan Kumar, Advocate for the Appellant

Judgement

Dr. B. Siva Sankara Rao, J.—This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. by the petitioner-accused, having been aggrieved by the order dated 12.12.2013 in CrI. M.P. No. 1024 of 2014 in C.C. No. 161 of 2012 passed by the learned XV Additional Metropolitan Magistrate, Medchal, Ranga Reddy District.

2. The petitioner is the accused in C.C. No. 161 of 2012 on the file of the XV Metropolitan Magistrate Court, Medchal, Ranga Reddy District, for the offence punishable under Section 420 of I.P.C. and Sections 82 and 83 of the Indian Registration Act covered by 56 of 2013, dated 22.06.2013 on the report of the Sub Registrar, Medchal by name G.V. Subba Reddy. The averments show that one G. Atmacharan Reddy, former Member of Parliament submitted a complaint to the Sub Registrar, Medchal dated 21.11.2012 stating that the petitioner who is a citizen of USA involved in many real estate transactions in Andhra Pradesh particularly in and around Hyderabad having acquired properties by buying and selling agricultural lands even in Medchal Sub Registry suppressing facts by

showing false address violating the provisions of the Registration Act and, the Regulations; that in the year 2005, the petitioner had three transactions under three sale deeds, in one of which given his address at Ambaripet village of Nizamabad district and in the other two as at new Santhoshnagar colony, Hyderabad. Based on the above, the Sub Registrar issued notice to the petitioner for appearance before him and the same was returned unserved.

3. It is based on the said report, police investigated the case and filed charge sheet against the petitioner under Section 173 of Cr.P.C., for the offences under Sections 420 of I.P.C. and Sections 82 and 83 of the Registration Act (for short, the Act) and the same was taken on file by cognizance of the offence against the accused.

4. It is after taken cognizance before framing of charges under Section 240 of Cr.P.C. as per the police warrant case, the petitioner filed the application in Crl. P. No. 1024 of 2013 under Section 239 of Cr.P.C. seeking for his discharge and the same was by order of the learned XV Metropolitan Magistrate, Medchal, dated 12.12.2013 ended in dismissal which is now impugned herein.

5. On perusal of the order impugned herein, it discloses that the petitioner/accused earlier filed a private complaint case in C.C. No. 206 of 2010 for the offence punishable under Section 138 of the Negotiable Instruments Act against the said G. Atmacharan Reddy on the file of XIX Additional Chief Metropolitan Magistrate, Hyderabad and the case was ended in conviction on 22.03.2013 with one and half year Simple imprisonment and a fine of Rs. 10,000/- with a default sentence of Simple Imprisonment for three months and also case ended in conviction in another case vide C.C. No. 207 of 2010 where it was held both sentences run concurrently and against the conviction said G. Atmacharan Reddy preferred an appeal. It is therefrom he started threatening the petitioner saying he can implicate the petitioner or he is going to implicate the petitioner in false criminal cases and cause him arrested unless the petitioner come for terms; further though said Atmacharan Reddy neither a victim nor aggrieved for the alleged sale transactions of petitioner and the address furnished therein in the sale deeds but for said Atmacharan Reddys instigation to the Sub Registrar in filing a false claims without obtaining legal proof and for no offences even made out. It is the contest of the petitioner therefrom that the entire material collected by prosecution does not disclose the offences against the petitioner with which charge sheet filed, from the same is purely a civil dispute, there is no suppression of facts even as one of the transactions in January, 2005 shows his native place address he has given and the other two of June and October, 2005 showing address of his mother-in-laws place where he resides whenever he used to visit India and he is also caretaker of his mother-in-law and these are permanent addresses of the petitioner respectively. The respondent-State opposed the discharge petition seeking for its dismissal alleging that the private complete case under the Negotiable Instruments Act between Atmacharan Reddy and the petitioner is no bearing with the present case that is registered based on

the report of Sub Registrar, Medchal. It is a crime against the society and the petitioner admits the mentioning of his native place as Nizamabad in one sale deed and the address of in mother-in-laws place in the other two sale deeds but silent about his U.S.A. Passport and the citizenship there and he has to obtain permission of FEMA Act for the sale transactions which he did not and the compounding of FEMA offence no way entitles him to commit the offence and there is a prima facie case to frame charges against the petitioner and he suppressed the factum of denial of return of passport by this High Court in Crl. P. No. 4054 of 2013 dated 30.04.2013 and the subsequent the order in his favour was returned on 18.05.2013 in Crl. P. No. 4165 of 2013 and sought for dismissal. The learned Magistrate therefrom observed that as per Section 239 of Cr.P.C. for discharge of accused without framing charges where there is no material whereas, in the case on hand there is an allegation of the petitioner cheated the Sub Registrar, Medchal by furnishing false residential addresses even in the sale deeds, even he is a citizen of USA and he went unsuccessful in quash proceedings and there is a prima facie case to frame charge and the contention of Sub Registrar has no jurisdiction to sue a case and also not tenable and also ultimately dismissed the same.

6. Impugning the same, the present revision is filed with the contentions that there is no case of cheating made out under section 420 of I.P.C. for nobody was cheated from the address furnished much less any deception or wrongful gain thereby for the addresses in the sale deeds in registering sale deeds after payment of the registration purpose and even under Sections 82 and 83 of the Act. The statements must be false and delivering of false copies of transactions or false personation and abetment which is lacking in the case for prosecution. Further under the A.P. Rules under the Registration Act in relation to transactions, the Sub Registrar, must with previous sanction of the Registrar lay a criminal complaint and even before instituting prosecution by the Sub Registrar, he must forward the report of the case to the Registrar and obtain his approval to the prosecution and the Registrar who institutes a prosecution or approves of the institution of a prosecution by a Sub Registrar or receives information that a prosecution has been instituted by a Sub Registrar, shall report that fact to the Inspector General, that Sections 32 and 32(a) of the Act, provides mentioning of permanent postal address of the executants and the A.P. Government Circulation No. G1/15654/2006 dated 13.11.2006 with prospective operation provides for executants of a registered document to submit any Government recognized address proof like ration card, election card, driving licence, identity card to avoid impersonation and the Sub Registrar cannot refuse registration or make any complaint basing on address proof furnished by the executants, furnishing of such address proof was not there prior to 13.11.2006 in particular when the sale deeds are of the year 2005 only and what was the address required in the sale deed earlier was postal address and not any permanent address proof for registration of the sale deed, that Atmacharan Reddy, is instrumental to the Sub Registrar to lay the complaint without even previous sanction mandatorily

required and the very giving of police report by Sub Registrar is unsustainable for registering crime and investigating the case in filing of charge sheet or to take cognizance apart from bar of limitation.

7. The learned Public Prosecutor by supporting the order of the lower Court contended for dismissal of the revision saying that there are no merits from the prima facie accusation to frame the charge.

8. Perused the material on record.

9. Now the points that arise for consideration are:

1. Whether the impugned order dated 12.12.2013 in CrI. M.P. No. 1024 of 2014 in CC No. 161 of 2012 passed by the learned XV Additional Metropolitan Magistrate, Medchal, Ranga Reddy District is unsustainable and requires interference for this Court while sitting in appeal, if so, with what observations?

2. To what result?

Point No. 1:

10. It is important to note in this juncture that the police Medchal, earlier for the self-same occurrence registered a crime vide Cr. No. 39 of 2013 under section 417 and 420 of I.P.C. based on the report of Sub Registrar, Medchal by name P.V. Ramana Murthy and the FIR dated 08.03.2013 and after investigation filed referred report of no case to array the accused in the charge sheet for the offence vide final report dated 18.10.2013 with observation that the sale deeds were executed in fact by the vendorscum pattadars and the petitioner is vendee though he is a resident of USA, his permanent address is Nizamabad as native place and also at Hyderabad, his mother-in-laws place and he purchased the land of about Ac. 13-07 guntas and later sold the same and executed to others and as per the information received by the Commissioner, HMDA, dated 03.08.2013 for the letter addressed on 10.07.2013 it disclosed that the land of Ac. 13.26 guntas is existing in special development Zone (multipurpose) use and as well as in growth corridor on either side of outer ring road, and a letter was also addressed to the Revenue Divisional Officer, East division, Ranga Reddy district who furnished report dated 24.08.2013 informing that the land was being used for agricultural purpose prior to 2005 and later lying vacant with no any agricultural operations or farmhouse and those are covered under special development zone as they fall within one Kilometre field from outer ring road on its either side, that the investigating officer when visited the office of the General Manager FEMA, at Lakdi ka pool and secured information regarding FEMA violation saying NRIs are not supposed to transact agricultural lands and the offence was under Section 36 of FEMA Act that was pointed out and the A.P. Agricultural Land (conversion from non-agricultural purpose) Act, 2006 came into force in the year 2006 only and the address given by him of his mother-in-law at one place and mother at another place of the year 2005 no way in violation thereby referred as a mistake of fact and that reached finality in fact there.

11. No doubt, there is no bar for further investigation even of the FIR registered and investigation earlier completed by filing referred report to say investigation must be on the same crime if at all transferred on point of jurisdiction rather than two F.I. Rs. for the same investigation parallally. Even apart from Rules 188 to 190 of the A.P. Rules under the Registration Act, 1908, relating to transaction for the offences under Section 82 read with 83 of the Act, or the like from any penal provisions of the Act and other law also alleged commission of offence under other laws, re-registration of offence A Sub Registrar, may with the previous sanction of the Registrar, lay a criminal complaint against a person who makes, in the process of registering a document an intentionally false statement, when however, execution is denied he shall not proceed to take evidence regarding execution and prosecute the executants for making false statement but merely refuse registration and leave the party concerned to bring the matter to an issue by applying to the Registrar under Section 73 for an enquiry into the fact of execution, and Sub Registrar, shall before instituting a prosecution, forwards a full report of the case to the Registrar and obtain his approval to the prosecution. If however, the circumstances demand immediate prosecution, a report shall be made by Sub Registrar to the Registrar, within 24 hours of the institution of the prosecution. A Registrar who institutes a prosecution or approves of the institution of a prosecution by a Sub Registrar or receives information that a prosecution has been instituted by a Sub Registrar shall report that fact to the Inspector General. Here under Rule 188, a criminal complaint has to be made. Section 2(d) of Cr.P.C. defines about complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Thus, a complaint is not a police report, the explanation of the Section 2(d) speaks A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant; Here, it is not a case for saying any non-cognizable offence discloses after investigation and the report may be taken as a complaint. For a complaint, to take cognizance by the Magistrate under Section 190 of Cr.P.C. the procedure is on filing of written complaint and after examination of the complainant and witnesses by recording their statements, taken the case on file. Here, it is not such a report submitted by the Sub Registrar to the police crime registered and investigated. The investigation is prerogative of the police including from Section 2(d) Explanation supra, they cannot file final report unless their investigation discloses commission of cognizable offence from the accusation made out by array of the accused in the charge sheet and then for Magistrate to take cognizance. Here, even for such police report to file by Sub Registrar by calling his report is instituting prosecution under Rule 190 even Rule 188 speaks only filing of a private complaint case, there also prior approval of the Registrar is mandatory from the use of the words shall and intimation by the Registrar also to the Inspector General about the institution of prosecution by the Sub Registrar and

once that is mandatorily provided by the statutory provision, the Sub Registrar has no right to abdicate and even there is any abdication of responsibility on their part, the Court cannot ignore while taking cognizance for the non-compliance with the mandatory requirements. In fact, in dealing with the offence under Section 7 of the Prevention of Corruption Act, 1988 (for short, the P.C. Act), the Apex Court in State of Karnataka through CBI Vs. C. Nagarajaswamy, held mandatory for taking cognizance sanction as required under Section 19 of the P.C. Act. It was held that when prior sanction by competent authority is provided by statutory provision which is a sine qua non for taking cognizance, ordinarily, the question to be dealt with at the stage of taking cognizance even cognizance taken erroneously, once the same comes to the Court notice at a later stage, a finding to that effect is to be given by the Court permissible and the accused also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction is required from this expression it is mandatory. Here, the provision is not only for a prior sanction of the Registrar to lay a private complaint case but also for instituting prosecution obtaining approval by the Registrar to the prosecution and in any urgent case intimating by report of case within 24 hours of institution and the District Registrar also in turn report to the Inspector General. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically. That is the matter of law and fact that was missed in this case in dismissing the application for discharge sought by the petitioner, suffice to say the Court could not have been taken cognizance of the offence against the accused.

Point No. 2:

12. In the result, the revision is allowed by setting aside the discharge dismissal application and the accused is discharged for the learned Magistrate has no right to take cognizance. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.