(2018) 02 KAR CK 0008

In the Karnataka High Court

Case No : 9387 of 2016

JAI PRAKASH NARAIN?S/O LATE R N PRASAD Vs STATE OF KARNATAKA

Date of Decision : 05-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0008

Hon'ble Judges : K. N. Phaneendra

Bench : Single Bench

Advocate : PRASANNA KUMAR P, SANDESH.J.CHOUTA., ASHOK.B.PATIL.

Final Decision : Disposed off

Judgement

1. Heard the learned counsel for the petitioners as well as the respondent No.2 and also the learned SPP-II for respondent No.1 - State.

2. The petitioner in Criminal Petition No.9387/2016 and Criminal Petition No.8405/2017 are respectively arrayed as A2 and A1 in Crime

No.157/2016 of Rajarajeshwari Nagar Police Station, Bengaluru,.

3. The brief facts that emanate from the records are that the second respondent herein has lodged a complaint (First Information Report) dated

30.8.2016 alleging that she is the absolute owner of property bearing Survey No. 19 and 22 of the Halagevoderahalli village, Kengeri Hobli,

Bengaluru South Taluk, totally measuring 7,436.50 sq. feet having specific boundaries. It is alleged that she has purchased the above mentioned

property under registered sale deed dated 29.7.2004 executed by its owner and thereafter, it was registered in her name under a document

No.KEN-1- 17776-2004-05 in Book-I, CD No.KEND 130 on 30.7.2004, in the office Senior Sub-Registrar, Kengeri, Bengaluru.

4. It is stated that she married to A2 Jayaprakash Narain in the year 1989. Both lived together and begot three children also. Subsequently, she left

the conjugal company of her husband and many proceedings taken place with regard to her matrimonial strained relationship. It is specifically

alleged that A1 is a business associate of A2, both have concocted a Power of Attorney dated 7.7.2005 alleged to have been executed by the

respondent No.2, on the basis of which, A1 has executed a sale deed in his own favour with respect to the disputed property. She came to know

about the same when her husband A2 has filed a suit for partition and separate possession in OS No.157/2016 with reference to the same

property and thereafter, she ascertained from different sources that the Power of Attorney has been forged by A1, with the help of A2. It is

specifically stated at paragraph 8 of the complaint, that for committing forgery other accused persons were also involved with A1 and A2 and at

paragraph 10 also, she has categorically stated that the Power of Attorney and the sale deed registered in the name of A1 is clearly with an

intention to cheat her, whereby all the above accused persons were conspired and forged the said document with a common intention to cheat her

in order to make unlawful gain. On the basis of the said complaint, the Police have registered a case in Crime No.157/2016 and they are

investigating the matter. In view of the stay granted by the court, the investigation is stand still.

5. The learned counsel for the petitioners in both the cases strenuously contended by bringing to the knowledge of this court about the conduct of

respondent No.2. In fact, it is alleged that she made the life of A2 miserable by lodging a complaint against A2 through her third daughter, so that

the Police can invoke the offence under POCSO Act. In the course of prosecution, with reference to the said Criminal Case, the child was

referred to Bangalore Mediation Centre and it was established that a false case has been foisted against A2 through the third daughter by the

second respondent.

6. The learned counsel for the petitioner further submits before this court that she has not filed any suit challenging the sale deed of A1.

7. It is the case of A1 and A2 that the second respondent has actually executed the Power of Attorney in favour of A1 and by virtue of the same,

he has executed a sale deed to himself in respect of the property. It is also the contention that in the year 2004-05, an amount of Rs.24 lakhs had been given by A2. It is the further allegations that A1 deposited the said sum of Rs.24 lakhs into the account of respondent No.2 as per the

direction of A2 for the purpose of purchasing the property in the name of second respondent. Therefore, it is virtually the property of A1 only, but

for the name sake purchased in the name of second respondent.

8. The said contentions in fact, has to be decided in the Civil suit filed by A2 against the second respondent in OS No.157/2016. Very peculiarly

enough, according to A2 the entire consideration amount said to have been paid by A2, but the partition suit has been filed by A2 for 3/4th share

in the said property. Therefore, it goes without saying that respondent No.2 has also got some share in the said property.

9. Be that as it may, the entire documents which are produced before this court shows that there is a serious allegations against the second

respondent with regard to her conduct and false allegations being made against A2 throughout since the date she left the conjugal company of A2,

including the allegations under POCSO Act, using her third daughter as a tool. But the conduct of the second respondent alone is not sufficient to

throw out the case of second respondent herein. 8

10. It is not only with regard to the property dispute which arose between the parties in order to initiate these criminal proceedings, but specifically

forgery of a document is alleged.

11. Of course, the second respondent has not filed any suit or any proceedings challenging the sale deed alleged to have been executed by A1 in

his favour, but she initiated the criminal proceedings only. The moot question that has to be considered is that during the course of investigation, if it

is found that the said document i.e., Power of Attorney alleged to have been executed by the second respondent dated 7.7.2005, is a forged

document, the consequence would be severe, if for any reason during the course of investigation, if the said document proved to be genuine

executed by the second respondent in favour of A1, then only, this court can draw an inference on the basis of all the surrounding circumstances

including the conduct of second respondent.

12. Though many documents have been produced to show that an amount of Rs.24 lakhs has been paid into the account of second respondent in

the year 2004- 05 itself, for what reason, the said amount has been deposited, how it has been utilized by the parties, whether the second

respondent has executed any Power of Attorney in favour of A1 and whether on the basis of such Power of Attorney, A1 was entitled to execute

the sale deed in his own favour. All those things have to be investigated or un-earthed during the course of investigation. It is only the allegations

which is at this stage, which has cropped up in the FIR. Though several documents have been produced to create a serious doubt with regard to

the conduct of the second respondent, that doubt also has to be thrashed out during the course of investigation. Whether on the basis of the

conduct of second respondent and the other materials available with the parties are sufficient to come to a conclusion that only due to vengeance, a

false case has been foisted. The same can be ascertained only after thorough investigation by the Investigating Agency. When allegations are made

in the FIR constitute an offence, in such circumstances normally the court should not interfere with the investigation, unless there are conclusive

materials before the court to draw certain inference deciding the case altogether at once.

13. In my opinion, as I have already noted, by means of production of document by the petitioner, a serious doubt is nevertheless created in the

mind of the court, but the suspicion itself is not sufficient at this stage to conclusively hold that the FIR is false and the document which are sought

to be examined by the Police is also not forged and such inference if it is given, at this stage itself, it will have its own adverse affect, so far as the

suit pending before the parties are concerned.

14. Under the above said circumstances, I am of the considered opinion that the parties should be given opportunity to produce all the documents

which are in their favour to the Investigating Officer and the Investigating Officer has to investigate into the matter impartially and submit an

appropriate report to the competent court of law. For any reason if the Police submits any report adverse to the petitioners herein and the said

report is baseless, then the petitioners are again at liberty to approach this court questioning the said proceedings.

With these observations, the petitions are disposed of. The Investigating Officer is hereby directed to give equal opportunity to both the parties and

thereafter expedite the investigation and submit a report as expeditiously as possible.

In view of the disposal of the petitions, pending consideration of IA No.1/2017 does not survive for consideration and the same stands dismissed.

