
(2013) 08 AP CK 0017

In the Andhra Pradesh High Court

Case No : Criminal P. No. 11774 of 2010

Shaik @ Mohammed Gousinnisa Begum @ Gousia Begum and
others

APPELLANT

Vs

Shaik Abdul Rasheed and another

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 23 : (2014) 1 ALD(Cri) 143

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

**Advocate : P. Gangarami Reddy, for the Appellant; M.P. Chandramouli for
Respondent No.1 and Additional Public Prosecutor, for the Respondent**

Judgement

R. Kantha Rao, J.—This criminal petition is filed u/s 482 Cr.P.C. to quash the proceedings in CC No. 258 of 2010 on the file of Judicial Magistrate of I Class, Gudur, SPSR Nellore District. Heard learned counsel for the petitioners, learned counsel for the 1st respondent-complainant and learned Addl. Public Prosecutor appearing for the respondent-State.

2. Brief facts relevant for considering the criminal petition are; that 1st respondent-complainant filed original suit, OS No. 73 of 2002 on the file of Senior Civil Judge, Gudur, for partition, against 1st & 4th petitioners (arrayed as defendants 14 and 1) and others claiming half share in the suit schedule mentioned properties. Petitioners 2 and 3 are proposed defendants 15 and 16 in the said suit, as on the date of filing the complaint by the 1st respondent-complainant. It is alleged in the complaint by the 1st respondent that 1st petitioner (A1) sold away the suit D-schedule property to petitioners 2 and 3 (A2 and A3) projecting herself as if she is the daughter late Shaik Sattar Saheb and late Khader Bee vide Document No. 2436/2008 on 26-07-2008. Subsequently, 4th petitioner (A-4) also executed a rectification deed vide Document No. 1118 of 2010 on 12-3-2010 confirming sale deed executed by 1st petitioner projecting herself as if she is the grand daughter of late Shaik Sattar Saheb and late Khader

Bee.

3. 1st petitioner (A1) executing sale deed on 26-07-2008 projecting herself as if she is the daughter late Shaik Sattar Saheb and late Khader Bee and the rectification deed executed on 12-3-2010 by the 4th petitioner (A4) projecting herself as if she is the grand daughter of late Shaik Sattar Saheb and late Khader Bee is not in dispute. According to the complainant, 1st petitioner is the daughter of late Khader @ Khaja Hussain and Anwar Jhan and not the daughter of late Shaik Sattar Saheb and late Khader Bee. The complaint before the trial Court against the petitioners was for the offences under Sections 81 and 82 of the Indian Registration Act, 1908, (for short, "the Act"). Learned Magistrate took cognizance of the aforesaid offences.

4. It is alleged by the complainant that petitioners 1 and 4 (A1 & A4) intentionally made false statements as if they are daughter and grand daughter of late Shaik Sattar Saheb and late Khader Bee, respectively, before the registering authority thereby committed offences under Sections 81 and 82 of the Act.

5. Sri P. Gangarami Reddy, leaned counsel for the petitioners would contend that whether 1st petitioner is daughter and 4th petitioner is grand daughter of late Shaik Sattar Saheb and late Khader Bee is a matter for adjudication pending consideration before the civil Court in civil proceedings and, therefore, they cannot be prosecuted for the offence u/s 82 of the Act. He would also contend that since petitioners 1 and 4 did not falsely impersonate anybody, but only claimed to be daughter and grand daughter of late Shaik Sattar Saheb and late Khader Bee, the prosecution u/s 82 of the Act is not maintainable. Nextly, he would contend that prosecution for offences under the provisions of the Act coming to the knowledge of the registering authority can be only initiated with the permission of the registering authority, and therefore, prosecution is not maintainable. Lastly, he would contend that against petitioners 2 and 3 (A2 & A3), it was only alleged that they colluded with 1st petitioner (A1) and based on the said allegation, petitioners 2 and 3 cannot be prosecuted.

6. Admittedly, in registered deed executed by 1st petitioner (A1) vide Document No. 2436/2008 on 26-07-2008 and rectification deed vide Document No. 1118 of 2010 on 12-3-2010 executed by 4th petitioner it was stated that they are daughter and grand daughter respectively of late Shaik Sattar Saheb and late Khader Bee. It is specifically alleged in para (6) of the complaint that 1st petitioner (A1) is the daughter of late Khader @ Khaja Hussain and Anwar Jhan and late Khader @ Khaja Hussain was the brother of late Khader Bee, W/o. late Shaik Sattar Saheb and in proof, that 1st petitioner (A1) is the daughter of late Khader @ Khaja Hussain and late Anwar Jhan, copy of the settlement deed dated 22-11-1976 bearing Document No. 2067 of 1976, executed by late Shaik Sattar Saheb and his brother late Shaik Razak Saheb in favour of 1st petitioner (A1) was filed into the Court. Therefore, whether petitioners 1 and 4 (A1 & A4) falsely claim to be daughter and grand daughter of late Shaik Sattar Saheb and late

Khader Bee is a triable question in the complaint filed by the complainant u/s 200 Cr.P.C. If the relationship stated by the petitioners 1 and 4 in the sale deed and rectification deed before the registering authorities proves to be false it does not offend Section 82 of the Act. However, as already stated the relationship of petitioners 1 and 4 with late Shaik Sattar Saheb and late Khader Bee is a triable question and, therefore, the complaint cannot be quashed against them.

7. As regards other question that permission of registering authority is required for commencing a prosecution for an offence under the Act, it is relevant to refer to the decision of the Hon''ble Supreme Court in Dharmadeo Rai Vs. Ramnagina Rai,) wherein the Hon''ble Supreme Court in para 3 observed thus:-

3... On a reading of the section, it would be clear that it deals only with prosecution for an offence under the Act coming to the knowledge of the Registering Officer in his official capacity. It, in effect, provides that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of any of the officers mentioned in the section. The section can possibly have no application to cases in which offences are committed under the Act, but the offences do not come to the knowledge of the Registering Officer in his official capacity. If the Registering Officer does not know in his official capacity that the document produced before him is a false document or that the person appearing before him is personating some other person, the section has no application. The section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in its language and intent. In other words, the section is an enabling one. It enables the person mentioned therein to commence a prosecution in cases where the commission of the offence under the Act comes to the knowledge of the Registering Officer in his official capacity. The Section enables the officers named to use their official position for the purpose of prosecution without personal risk.

8. In view of the ratio laid down by the Hon''ble Supreme Court in the above referred case, there is no legal impediment for a private person to launch prosecution without the permission of the registering authority. However, petitioners 2 and 3 (A2 & A3) are concerned it is only alleged against them that they colluded with the 1st petitioner (A1). No other details are mentioned in the complaint against petitioners 2 and 3. Vague and bald allegations cannot be the basis for commencing criminal proceedings and if it is allowed to continue, it would amount to abuse of process of law and ultimately result in miscarriage of justice. Therefore, petitioners 2 and 3 (A2 and A3) cannot be prosecuted for the offences u/s 81 and 82 of the Act, in the absence of any specific allegations levelled against them. Consequently, criminal petition in respect of petitioners 1 and 4 (A1 and A4) is dismissed, but allowed against petitioners 2 and 3 (A2 and

A3). Any observations made in this case while disposing of the criminal petition shall have no bearing on the trial Court while disposing of the complaint against petitioners 1 and 4 (A1 and A4) and the trial Court shall deal with the questions involved independently. Miscellaneous petitions, if any pending in this case shall stand closed.