
(2016) 04 AP CK 0033

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 8653 of 2010

Ummadisetti Ratnasagar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Citation : (2016) 5 ALT 337 : (2016) 3 ALTcr1 26 : (2016) 2 AndhLDCriminal 135 : (2016) 4 RCRCriminal 785

Hon'ble Judges : Sri T. Sunil Chowdary, J.

Bench : Single Bench

Advocate : Sri K. Chidambaram, Advocate, for the Appellant; Public Prosecutor, Sri Koneti Raja Reddy, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sri T. Sunil Chowdary, J.—This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioner/A.2 in C.C. No. 113 of 2010 on the file of the Court of the Special Mobile Munsif Magistrate, Guntur, which was taken on file for an offence punishable under Section 420 r/w 34 of IPC.

2. The contention of the learned counsel for the petitioner is three fold viz., 1) The trial Court committed grave error while taking cognizance of offence against the petitioner in view of the bar under Section 197 Cr.P.C, 2) Even if the allegations made in the complaint ex facie are taken to be true and correct, no case is made out against the petitioner, and 3) The trial Court failed to consider that the petitioner registered cancellation deed of General Power of Attorney? Agreement of sale while discharging his official duties as Sub-Registrar.

3. Per contra, the learned counsel for the second respondent submitted that whether the petitioner has discharged his duties in good faith or not is purely a question of fact, which cannot be gone into by this Court while exercising the inherent jurisdiction under Section 482 Cr.P.C. He further submitted that the

petitioner registered cancellation deed of General Power of Attorney?cum? Agreement of sale in violation of Rule 26(i)(k)(i) of the A.P. Rules under the Registration Act, 1908 (hereinafter referred to as "the Rules"). It is his last contention that the act of the petitioner would fall outside the purview of discharge of official duties, therefore, no sanction is required to initiate criminal prosecution against the petitioner.

4. The facts leading to filing of the present petition, briefly, are as follows:

5. The second respondent filed a complaint under Sections 190 and 200 Cr.P.C. on the file of the Special Mobile Munsif Magistrate, Guntur against the petitioner and another for the offences punishable under Sections 120-B, 192, 199, 405, 406, 420, 423 and 425 of IPC alleging that accused No. 1 purchased property mentioned in the complaint from Dasari Chittibabu and others under registered sale deed bearing document No. 2178 of 2004 dated 27.2.2004. The accused No. 1 executed General Power of Attorney?cum?Agreement of sale in favour of the second respondent on 26.12.2005 by receiving an amount of Rs. 7,27,000/- in respect of the property in question, vide document No. 16923 of 2005. On 05.03.2007, the petitioner, in collusion with accused No. 1, unilaterally registered cancellation deed of General Power of Attorney?cum?Agreement of sale dated 26.12.2005, without following the procedure contemplated under the Indian Stamp Act and Registration Act in a hurried manner. The petitioner played fraud and cheated the second respondent.

6. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of offence against the petitioner and another under Section 420 r/w 34 of IPC and issued process.

7. Though the second respondent filed the complaint against the petitioner and another for the offences punishable under Sections 120-B, 192, 199, 405, 406, 420, 423 and 425 of IPC, the trial Court has taken cognizance of offence against the petitioner and another under Section 420 r/w 34 of IPC only. For one reason or the other, the second respondent did not challenge the action of the learned Magistrate in not taking cognizance of other offences against the petitioner and accused No.2.

8. On the given facts and circumstances of the case, the point that emerges for consideration in this Criminal Petition is "whether there are any grounds to quash the criminal proceedings against the petitioner or not"

9. It is an admitted fact that the accused No. 1 is the owner of the property in question by virtue of registered sale deed dated 27.2.2004. The accused No. 1 executed a General Power of Attorney?cum?Agreement of sale dated 26.12.2005 in favour of the second respondent. Again the accused No. 1 executed a deed of cancellation dated 05.03.2007 and got it registered cancelling the General Power of Attorney?cum?Agreement of sale dated 26.12.2005. The petitioner was working as Sub-Registrar in Guntur as on 05.03.2007.

10. The predominant contention of the learned counsel for the second respondent is that the petitioner ought not to have registered the cancellation deed dated 05.03.2007 without giving notice to the second respondent. To substantiate the said contention, the learned counsel has drawn my attention to Rule 26(i)(k)(i) of the Rules, which reads as follows:

"The Registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale."

(underlined by me)

11. A perusal of the above said Rule reveals that this Rule was published in A.P.Gazette R.S. to Pt. II, Ext. No. 18, dated 29.11.2006. Therefore, this Court can safely presume that the Sub-Registrars who are discharging their duties are supposed to follow the rules with effect from the date of publication. Therefore, the Rule is in force as on the date of registration of the deed of cancellation i.e. 05.03.2007.

12. The crucial question that falls for consideration is whether the deed of cancellation dated 05.03.2007 fall within the definition of 'conveyance' or not. Sub-Section 10 of Section 2 of the Indian Stamp Act 1899 defines 'conveyance', which reads as under:

"Conveyance" includes a conveyance on sale, every instrument and every decree or final order of any Civil Court, by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, inter vivos, and which is not otherwise specifically provided for by Schedule-I or Schedule I-A as the case may be."

13. It is not out of place to extract hereunder Sub-Section 14 of Section 2 of the Indian Stamp Act 1899 in order to ascertain whether the document in question will fall within the definition of 'instrument', which reads as under:

"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

14. The word 'conveyance' encompasses in it conveyance on sale or every instrument. The other part of definition of conveyance is not relevant so far as the facts of the case on hand are concerned. If any right is created, transferred, limited, extended or extinguished by way of any document, the same will be called as an 'instrument'.

15. The document in question is General Power of Attorney cum Agreement of

sale. The very purpose of execution of G.P.A. is to enable the principal to appoint an agent to act on his behalf or to do a specific or a particular act. A principal is entitled to revoke his GPA at any point of time subject to terms and conditions of agency. So far as the agreement of sale is concerned, the same does not create title to the vendee. Under the agreement of sale the title remains with the vendor. Section 54 of the Transfer of Property Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. Neither interest nor title is created in favour of the second respondent under the General Power of Attorney?cum?Agreement of sale dated 26.12.2005.

16. Rule 26(i)(k)(i) of the Rules does not deal with conveyance of any mode other than the deed of conveyance on sale. The concerned Sub-Registrar is not entitled to register cancellation deed in respect of a registered deed of conveyance on sale without prior notice to the parties to the document. The Legislature in its wisdom employed the word 'deed of conveyance on sale' in Rule 26(i)(k)(i) of the Rules. The Court has to interpret the words in the context it is being used to achieve the object for which the Rule was made. The cardinal principle of interpretation of statute or Rules is that each word shall be interpreted keeping in mind the very object for which the Act or Rule was brought into existence. The above Rule is applicable if the document is only a deed of conveyance on sale. No doubt, the word 'conveyance' encompasses in it every instrument. The document in question does not fall within the parameters of 'instrument'. By any stretch of imagination it cannot be presumed that the document in question will fall within the purview of 'deed of conveyance on sale' as postulated under Rule 26(i)(k)(i) of the Rules or Conveyance or Instrument as defined under Section 2(10) and 2(14) of the Indian Stamp Act respectively.

17. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the second respondent that the petitioner violated Rule 26(i)(k)(i) of the Rules while registering the deed of cancellation dated 05.03.2007.

18. The next question that falls for consideration is 'whether sanction is required in order to initiate criminal proceedings against the petitioner?'

19. It is an admitted fact that the petitioner registered the cancellation deed dated 05.03.2007 while discharging his duties as Sub-Registrar of Guntur. For better appreciation of rival contentions, it is not out of place to extract hereunder Section 84(1) of the Registration Act, which reads as under:

84. Registering Officers to be deemed public servants?(1) Every Registering Officer appointed under this Act shall be deemed to be a Public Servant within the meaning of the Indian Penal Code.

20. A perusal of the above provision clearly demonstrates that every Sub-Registrar will fall within the purview of 'Public Servant' as defined under Section 21 of the Indian Penal Code.

21. A perusal of Section 86 of the Registration Act clearly postulates that no Registering Officer shall be liable to any suit, claim or demand by reason of anything done in good faith or refused to do in his official capacity.

22. A reading of Section 84(1) in juxta position with Section 86 of the Registration Act clearly reveals that a Sub-Registrar who did some act in discharge of his official duties cannot be prosecuted without previous sanction. On the other hand, the petitioner registered the cancellation deed on 05.03.2007 in good faith that he is under an obligation to register the documents after following the due procedure. The word 'good faith' as used in Section 86 has to be construed with reference to discharge of his official duties only. If anything done outside the purview of his official duties, that act will not fall within the ambit of good faith. In the instant case, the petitioner registered the cancellation deed while discharging his duties as Sub-Registrar, within the meaning of a public servant as defined under Section 21 of IPC.

23. The learned counsel for the petitioner has drawn my attention to the ratio laid down in :-

Madicharla Nageswara Sastry v. State of Andhra Pradesh, 2008 ALT (Cri) (1) 191 wherein this Court held as under:

"In the instant case, the allegation against the petitioner A.10 is that while acting or purporting to act in discharge of official duties as Sub-Registrar, he failed to properly scrutinise the stamp papers and the entries in the concerned registers to detect the ante-dated nature of the stamps. It cannot be disputed that scrutiny of the stamps and verification of the concerned registers formed part of the official duties of the petitioner A.10. The alleged failure on his part to properly scrutinise the stamps and verify the registers is certainly an act or omission, which has reasonable connection with discharge of his official duty. Admittedly, the prosecution agency has not applied to the Government for sanction to prosecute the petitioner, who is a public servant, within the meaning of Section 21 IPC. Since no sanction order is obtained to prosecute the petitioner, the proceedings against him are liable to be quashed. It is not disputed that previously this Court by order dated 16.4.2007 allowed Crl.P. No. 2007 of 2007 quashing the prosecution against A.6 who is also a Sub-Registrar at Bheemavaram during the relevant period and the case of the petitioner A.10 also stands on the same footing."

Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557 wherein the Hon'ble apex Court held as under:

6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable

cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and it is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him, answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

13. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which application of Section 197 of the Code cannot be disputed.

Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584 wherein the Hon'ble apex Court held as under:

63. In K. Kalimuthu v. State, (2005) 4 SCC 512, it was stated that the protection given under Section 197 of the Code is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything

done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But the said protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act.

67. From the aforesaid decisions, in my opinion, the law appears to be well settled. The primary object of the legislature behind Section 197 of the Code is to protect public officers who have acted in discharge of their duties or purported to act in discharge of such duties. But, it is equally well settled that the act said to have been committed by a public officer must have reasonable connection with the duty sought to be discharged by such public officer. If the act complained of has no nexus, reasonable connection or relevance to the official act or duty of such public servant and is otherwise illegal, unlawful or in the nature of an offence, he cannot get shelter under Section 197 of the Code. In other words, protection afforded by the said section is qualified and conditional.

24. As per the principle enunciated in the cases cited supra, the Sub-Registrar will fall within the definition of 'public servant' as contemplated under Section 21 of IPC. In order to prosecute a Sub-Registrar, in respect of an act done by him in discharge of his official duties, previous sanction is mandatory. In the instant case, even as per the allegations made in the complaint, the petitioner registered the cancellation deed while discharging official duties. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the second respondent that the act done by the petitioner on 05.03.2007 will not fall outside the purview of his official duties.

25. Having regard to the facts and circumstances of the case and also the principle enunciated in cases cited supra, I am of the considered view that complaint is not maintainable against the petitioner without obtaining previous sanction. The learned Magistrate, while taking cognizance of offence, has not considered the scope of Section 197 Cr.P.C. Therefore, it is manifest that the trial Court has committed grave error in taking cognizance of the offence against the petitioner. Taking cognizance of offence against the petitioner in violation of Section 197 Cr.P.C. is non-est in the eye of law. In such circumstances, compelling the petitioner to face the rigour of trial would certainly amount to miscarriage of justice. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Hon'ble apex Court held that where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party, then the proceedings can be quashed. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to quash the criminal proceedings against the

petitioner in order to secure the ends of justice.

26. For the foregoing discussion, this Criminal Petition is allowed, quashing the proceedings against the petitioner/A.2 in C.C. No. 113 of 2010 on the file of the Court of the Special Mobile Munsif Magistrate, Guntur. Consequently, miscellaneous petitions, if any, pending in this petition, shall stand closed.