



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 15451 OF 2019 (GM-RES)



BETWEEN:

1. SRI. Y.N. SREENIVASA
S/O LATE NARAYANASWAMAPPA
AGED ABOUT 73 YEARS
R/A NO.14, 1ST MAIN
11TH A CROSS, WEST OF CHORD ROAD
2ND STAGE, BANGALOR-86
2. SMT. SURAKSHA
W/O Y.N. SREENIVASA
AGED ABOUT 50 YEARS
R/A NO.14, 1ST MAIN
11TH A CROSS, WEST OF CHORD ROAD
2ND STAGE, BANGALORE-86

...PETITIONERS

(BY SRI. D.R. RAVISHANKAR, SENIOR COUNSEL A/W
SRI. SARAVANA.S, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY SANJAYNAGAR POLICE STATION
SANJAYNAGAR, BENGALURU
2. SMT. LATHA MANJARI
W/O LATE L.N. ASHWATHAMA
AGED ABOUT 68 YEARS
R/A NO.13, 15TH CROSS
5TH MAIN, HIG HOUSES
RMV II STAGE, BANGALORE-94
3. Y.A. CHETAN KUMAR
S/O LATE L.N. ASHWATHAMA
AGED ABOUT 41 YEARS

Digitally signed by
POORNIMA
SHIVANNA
Location: HIGH
COURT OF
KARNATAKA



R/A NO.13, 15TH CROSS
5TH MAIN, HIG HOUSES
RMV II STAGE, BANGALORE-94

4. SMT. Y.A. GAYATHRI
W/O H.V. NANDAKUMAR
AGED ABOUT 47 YEARS
R/A NO.57, CHARLES CAMPBELL ROAD
COX TOWN, BANGALORE-5

... RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP FOR R1;
SRI. A. SAMPATH, ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR WRIT OF APPROPRIATE DIRECTIONS TO QUASH THE FIR REGISTERED BY THE 1ST RESPONDENT IN CRIME NO.233/2018 VIDE ANNEXURE-C, DATED 17.12.2018 AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 26.09.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs:-

- i. *Issue a writ in the nature of certiorari or writ of appropriate directions to quash the FIR registered by the 1st respondent in Crime No.233/2018 vide Annexure-C, dated 17.12.2018, and pass such other suitable orders as deemed fit to meet the end of justice.*
- i(a). *Issue a writ of appropriate nature to quash the C.C.No.8941/2019 as per Annexure-E pending on the file of the 8th Addl. Chief Metropolitan Magistrate in the ends of the justice.*
- ii. *Pass any other appropriate order or orders as deemed by the Hon'ble Court in the interest of justice and equity.*



2. Respondent Nos.2, 3 and 4 filed a complaint on 17.12.2018 at respondent No.1-Sanjay Nagar Police Station alleging that petitioner No.1 and the husband of respondent No.2 were the owners of the land in Sy.No.26/5 measuring 1 acre 11 guntas which was acquired by the Bangalore Development Authority, an extent of 14 guntas have been left out for the land owners i.e., petitioner No.1, husband of petitioner No.2, petitioner Nos.3 and 4 who are brother and sister of petitioner No.1.
3. In a portion of the left out property, a temple was built which was managed and run by petitioner No.1 and husband of respondent No.2. The husband of respondent No.2/L.N.Ashwathama had expired on 30.10.2010.
4. It is alleged that the petitioner No.1 has executed a gift deed in favour of petitioner No.2 on 04.05.2018, as regards a portion of the above property. Another



gift deed was executed on the same date in favour of petitioner No.2 and the son of petitioner Nos.1 and 2 as regards another portion of the above property. Within a period of 20 days thereafter, an absolute sale deed was executed by the Trust represented by the petitioner Nos.1 and 2 and their son in favour of petitioner No.2 on 31.03.2018.

5. It is alleged that the gift deeds were registered by the Sub-Registrar on the basis of forged and fabricated khatha certificate as also forged and fabricated tax-paid certificate, wherein the name of the husband of respondent No.2 which was mentioned earlier, has been deleted as if to contend that petitioner No.1 is the sole owner of the property.
6. It is on that basis that the said complaint in Crime No.233/2018 came to be registered by the respondent No.1/Sanjay Nagar Police Station for the offences under Sections 419, 468, 471 and 420 read



with Section 34 of the Indian Penal Code (IPC). It is aggrieved by the same that the petitioners are before this court seeking for the aforesaid reliefs.

7. Sri. D.R.Ravishankar, learned Senior Counsel appearing for the petitioners would submit that:

7.1. The offences, if any, are under Section 177 of IPC, wherein the petitioners are alleged to have submitted false information for the purpose of registration of a gift deed and a sale deed. The false information, if any, having been submitted to the Sub-Registrar who had registered the gift deed and the sale deed, it is for the said Sub-Registrar to initiate criminal proceedings in view of Section 195(1)(a)(i) of the Code of Criminal Procedure (Cr.P.C.), which prohibits any Court from taking cognizance of offences under Sections 172 to 188 of IPC.

7.2. There has been no inducement which has been made by the petitioners insofar as the



complainants are concerned, even an offence under Section 468 of IPC would require commission of forgery for the purpose of cheating, which would again require an act on part of the petitioners viz-a-viz the complainants by way of inducements etc., which has not occurred and as such, no offence under Sections 419, 420, 468 of IPC has been committed by the petitioners.

7.3. Insofar as the offence under Section 471 of IPC, he submits that this offence could have been only committed insofar as the Sub-Registrar is concerned since the alleged fabricated document has been used in the office of the Sub-Registrar and not as regards the complainants and in this regard he submits that no offence has been made out, the above petition is required to be allowed.



7.4. Alternatively, he submits that the respondents have already filed a suit in O.S.No.8927/2018 which is now pending on the file of City Civil Judge at Bengaluru, wherein the complainants have sought for a declaration that the gift deeds executed are fraudulent and not binding on the plaintiffs as also for cancellation of the registration carried out by the Sub-Registrar and further reliefs have been sought for namely, injunction restraining the petitioners from damaging the property of the temple as also injunction restraining the petitioners from obstructing the complainants from participating in the management of the affairs of the temple, etc.,

7.5. He therefore, submits that the above reliefs which have been sought for in the civil suit filed on 12.12.2018 prior to the filing of the criminal complaint on 17.12.2018, the criminal



complaint is only to give a criminal twist to the civil dispute between the parties and as such, the criminal proceedings are required to be quashed.

8. Per contra Sri. A. Sampath, learned counsel appearing for respondent Nos.2 to 4 would submit that:

8.1. It is the property of respondent No.2 which has been usurped by the petitioners by fabricating the khatha certificate and the tax paid receipt, if not for such fabrication, there would have been no registration. The fabrication relating to the property of respondent No.2. It has deprived the respondent No.2 of valuable rights in the property and as such, respondent No.2 has a valid and subsisting right to initiate criminal proceedings for any offences which have been initiated against respondent No.2.



8.2. He submits that cheating has occurred on account of the property of respondent No.2 having been usurped by the petitioners by fabricating and forging documents, as such, offences under Sections 419, 420, 468 and 471 of IPC are applicable.

8.3. The offence under Section 177 of IPC is a separate offence as regards which the Sub-Registrar could have always initiated action. The present complaint is as regards the personal grievance of the respondents and the respondents are not concerned with any proceedings that may be initiated by the Sub-Registrar. On this ground, he submits that the petition is required to be dismissed; a charge sheet having been laid, the trial ought to continue.

9. Sri. Mahesh Shetty, learned HCGP would submit that a thorough investigation having occurred, enough



and more materials are on record to implicate the petitioners in the offences alleged. This Court ought not to intercede in the matter at this stage and permit the trial to continue.

10. Heard Sri. D.R.Ravishankar, learned Senior Counsel for the petitioners, Sri. Mahesh Shetty, learned HCGP for respondent No.1 and Sri. A. Sampath, learned counsel for respondent Nos.2 to 4 and perused papers.
11. The points that would arise for determination of this Court are:
 1. **Whether a private individual would be barred from initiating proceedings under Sections 419, 420, 468 and 471 of IPC on account of the fabrication having occurred before a Sub-Registrar, which is an offence under Section 177 of IPC and would the same bring into force the bar under Section 195(1)(a)(i) of Code of Criminal Procedure?**
 2. **Whether a private individual said to be affected by any forgery can initiate a criminal complaint for the offences punishable under Sections 419, 420, 468, 471 of IPC?**



3. What order?

12. **Answer to Point No.1: Whether a private individual would be barred from initiating proceedings under Sections 419, 420, 468 and 471 of IPC on account of the fabrication having occurred before a Sub-Registrar, which is an offence under Section 177 of IPC and would the same bring into force the bar under Section 195(1)(a)(i) of Code of Criminal Procedure?**

12.1. Section 177 of IPC is reproduced hereunder for easy reference:

177. Furnishing false information. —

Whoever, being legally bound to furnish information, on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

13. A perusal of the above provision would indicate that whoever being legally bound to furnish information



on any subject to any public servant, furnishes as true information which is false, he shall be punished.

14. The contention of Sri.D.R.Ravi Shankar, learned Senior counsel for the petitioners is that since the document was registered on the basis of the alleged false information submitted, then the offences under Section 419, 420, 468 and 471 of IPC would not be attracted and is only an offence under Section 177 of IPC.

15. In my considered opinion an offence under Section 177 of IPC is a separate and distinct one from that under Section 419, 420, 468 and 471 of IPC inasmuch as it relates to furnishing of false information to a public servant. So the aggrieved person in such a situation would be the public servant and if he so desires, action could be initiated by such public servant.



16. In the present case, the Sub-Registrar having acted on a false document/information submitted by the petitioner, the Sub-Registrar if not for the false document would not have registered the gift deed. It may be possible that the sub-registrar is not aware of the same, hence, in the event of the above facts being brought to the notice of the Sub-Registrar it would be for him to initiate or file a complaint under Section 177 of IPC as regards the said offence.

17. The further submission of Sri.D.R.Ravishankar, learned Senior counsel for the petitioners is that no Court shall take cognizance of offence under Section 177 of IPC since there is an embargo in terms of Section 195(1)(a)(i) of Cr.P.C. and it is only if a complaint in writing by a public servant is given, then cognizance could be taken. It is on that basis, he contends that the gift deed allegedly having been registered on the basis of a false document unless the complaint had been submitted by a Sub-



Registrar, the Magistrate ought not to have taken cognizance of the same.

18. I am of the considered opinion that the embargo under Section 195(1)(a)(i) of Cr.P.C. is only as regards offence under Section 172 to 188 of IPC. In the present case, there is no complaint which has been filed insofar as an offence under Section 177 of IPC is concerned. The Sub-Registrar is not the complainant. The present complaint has been filed by persons who are affected personally by the registration of gift deeds and it is on that basis that it is alleged that the offences under Section 419, 420, 468 and 471 of IPC have been committed.

19. As held above, it is only when criminal proceedings for offence under Section 177 of IPC is initiated that the requirement under Section 195(1)(a)(i) of Cr.P.C. would come into play.



20. The same in my considered opinion would not apply when a complaint has been filed by the complainant as regards offences committed against him/her. Thus, I answer Point No.1 by holding that a private individual would not be barred from initiating proceedings under Section 419, 420, 468 and 471 of IPC on account of fabrication having occurred before a Sub-Registrar, which is a separate offence under Section 177 of IPC. The requirement under Section 195(1)(a)(i) of Cr.P.C., would only apply when complaint is not as regards an offence under Section 177 of the IPC.

21. **Answer to Point No.2: Whether a private individual said to be affected by any forgery can initiate a criminal complaint for the offences punishable under Sections 419, 420, 468, 471 of IPC?**

21.1. In view of my answer to Point No.1, it is clear that any person who is affected by any forgery which in this case, the complainants claim to be on account of gift deeds being registered on the



basis of a forged katha certificate and tax paid receipts in furtherance of which a sale deed has been executed depriving the complainants of their right in the property, the genesis of the gift deeds and the sale deed being the fabrication of a katha certificate and tax paid receipts irrespective of a suit being filed for declaration of the gift deed and sale deed not being binding on the complainant, a criminal complaint for offences punishable under Section 419, 420, 468 and 471 of IPC would be maintainable.

21.2. The reliefs which are sought for in the said suit are for the purposes of cancellation and/or declaration as regards the validity and bindingness of the gift deed and the sale deed, which cannot be granted in a criminal proceeding. The Civil Court cannot punish the accused for criminal offences of forgery, cheating etc. Hence, though both the



proceedings arise from the very same action, I am of the considered opinion that both relating to different aspects, both a suit and criminal complaint would be maintainable and any individual who is affected by any forgery or cheating or like can initiate a criminal complaint for such offences.

22. Answer to Point No.3: What order?

22.1. In view of my finding on Points No.1 and 2, there are no grounds, which are made out by the petitioners for this Court to intercede in the matter. Hence, I pass the following

ORDER

- i. The Writ Petition is dismissed.
- ii. Liberty is reserved to the petitioners to raise all defences before the trial Court.

**Sd/-
JUDGE**