

Ratna Vs. The State of Karnataka and Another

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Court : Karnataka Dharwad

Decided On : Jun-05-2014

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 100526 of 2014

Appellant : Ratna

Respondent : The State of Karnataka and Another

Judgement :

(Prayer: This Criminal Petition Is Filed Under Section 482 Of Code Of Criminal Procedure, Praying To Quash The Entire Charge Sheet In C.C. No.507/2012 (Crime No.147/2009) On The File Of Principal Civil Judge (Jr. Dvn.) And Principal Jmfc, Dharwad Registered For The Offences Punishable Under Section 465, 468, 471, 420, 120 B, 427 R/W 34 Of I.P.C. In So Far Petitioner Is Concerned.)

1. A person by name Basavaraja Lakkundi lodged a complaint making allegations against one Niyaz Ahmed, Shakeel Ainapur and M.K. Attar for the offences punishable under Sections 465, 468, 471, 120B, 427 r/w 34 of I.P.C. On the basis of the said first information report, the Sub-Urban Police, Dharwad investigated the matter, submitted the charge sheet. Though at the time of first information report, the name of this petitioner Smt. Ratna, who is an Advocate Notary residing at Saptapur, Dharwad was not arrayed as accused, but at the time of filing of the charge sheet her name was also included in the charge sheet by the Police. The

Court also took cognizance of the offence and it appears having come to know about the issuance of the summons, the petitioner approached this Court for quashing of the entire proceedings against her.

2. On. perusal of the charge sheet averments, it is mentioned that the complainant and CWs 12 to 15 are the owners of two house properties in CTS No. 101/1E/MF. It is stated that in order to defraud the complainant and CWs 12 to 15 the accused persons named in the first information report i.e. Niyaz Ahmed, Shakeel Iqbal Ainapur and M.K. Hattar have joined hands with each other, created a false power of attorney forging the signatures of the complainant and the other persons have created sale deed in favour of accused No.2 as shown in the FIR. It is also stated in the charge sheet that the said Power of Attorney created by accused Nos. 1 and 2 was notarized by the petitioner herein who is arrayed as accused No.3 by the Police in the Charge Sheet. But as could be seen from the brief Note in the charge sheet, there is no specific averments to show, how this accused No.3 is arrayed as accused No.3 and on what basis is also not stated. Therefore, it is incumbent upon the Court to look into the statements of witnesses whether anybody has implicated this petitioner into the crime.

3. I have carefully perused the statements of one Smt. Bharathi, Dakshayini, Ravikumar and Smt. Nirmala who are really the aggrieved parties, but they made allegations of forgery against the accused Nos. 1 and 2 but not against the petitioner. Nowhere in their statements they have even mentioned the name of this petitioner nor they have stated that any role has been played by this petitioner, in order to implicate her to the alleged offences as mentioned in the charge sheet. Therefore, on facts, the entire charge sheet even if it is translated into evidence, no material is available against the petitioner.

4. It is also seen from the records that one Mr. Shakeel who was arrayed as accused No.2 in the first information report moved this Court in CrI. P. No. 7900/2010 and it appears that there was a compromise between the complainant Basavaraj and the said Shakeel and this Court recording the said compromise between the parties, quashed the proceedings against the said Shakeel who appears to be the purchaser of the property.

5. The learned Counsel also brought to my notice that under Section 13 of the Notaries Act, 1952 there is a legal bar for the Court to take cognizance of any offence committed by a Notary. The said provision reads thus:

"13. Cognizance of offence,(1) No Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf (2) No Magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act".

6. On perusal of the above said provision, if the allegation is made against a Notary that while executing the functions of a Notary or purported exercise of the functions under the Act, if any offence is committed no Court shall take cognizance unless a complaint in writing made by an Officer authorised by the Central Government or State Government by general or special order in this behalf. Therefore, the above said provision is also a legal and specific bar to take cognizance of the offence. The charge sheet allegations is that, the accused No.3 - the petitioner has notarized the said General Power of Attorney. Except the said allegations nothing has been stated how she has taken part in cheating the complainant or any other person.

7. Under the above said circumstances, I am of the opinion, in view of the legal bar and the factual aspects narrated in the charge sheet papers do not constitute any offence against the petitioner. Therefore, the proceedings deserves to be quashed.

8. Hence, the following Order :

The petition is allowed. The proceedings in C.C. No. 507/2012 pending before the Principal Civil Judge (Jr.Dvn.) and Principal JMFC, Dharwad for the offences under Sections 465, 468, 471, 120-B, 427 r/w Section 34 of I.P.C. so far it relates to the petitioner is concerned is hereby quashed.