

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.718 of 2021

Between:

J. Gopala Krishna
S/o. Late Papa Rao, Aged about 66 years,
R/o. D.No.15-52/9, Flat No. S-3,
Surabhi Apartment, Virat Nagar,
Pralhadapuram, Visakhapatnam.

... PETITIONER

AND

\$ Kolli Kishore,
S/o. Late Polayya, Aged about 58 years,
R/o.D.No.45-2-60/58/2,
Ramachadranagar,
Akkayyapalem, Visakhapatnam.

... RESPONDENT

Date of Judgment pronounced on : 16.12.2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals:
3. Whether the Lordship wishes to see the : Yes/No
fair copy of the Judgment ?

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! Counsel for petitioner : Mr. S. Srinivasa Rao

^Counsel for the respondent : Mr. A.S.C. Bose

<GIST:

>HEAD NOTE:

? Cases referred:

¹ 2002 (3) ALT 513¹ 2005(2) ALT (Cr1.) 55 (A.P.)¹ (2002) 1 Supreme Court Cases 253

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**CIVIL REVISION PETITION No.718 of 2021****ORDER:**

The respondent herein had filed O.S.No.93 of 2019 on the file of the Court of Principal Junior Civil Judge-cum-Metropolitan Magistrate, Visakhapatnam, against the petitioner herein for permanent injunction restraining the petitioner from interfering with the peaceful possession and enjoyment of the suit schedule property by the respondent herein. The case of the respondent was that the petitioner herein had executed a deed of sale registered as document No.4926/1986 in favour of the respondent and thereafter sought to interfere with the possession and enjoyment of the suit schedule property by the respondent. An application was also filed for temporary injunction restraining the petitioner from interfering with the said possession of the respondent. In the course of the hearing of the application, the said document bearing No.4926/1986 was produced before the Court.

2. The case of the petitioner was that he had never executed any deed of sale and the document produced by the respondent was a fabricated document. Thereupon, the petitioner had moved I.A.No.13 of 2020 under Section 340 of Criminal Procedure Code (for short 'Cr.P.C.') r/w Section 151 of Civil Procedure Code (for short 'C.P.C.') to conduct an enquiry into this issue and to forward a complaint to the appropriate Magistrate having jurisdiction for prosecution under Section

195 of Cr.P.C. This application was dismissed by the trial Court by an order dated 22.03.2021. Aggrieved by the said order of dismissal, the petitioner has approached this Court by way of this revision petition.

3. The trial Court took the view that an enquiry under Section 340 of the Cr.P.C. is premature, as no finding has been given by the trial Court regarding the said registered deed of sale and in any event, no material has been placed before the Court to establish ingredients of Section 340 of the Cr.P.C. The trial Court took this view on the ground that the suit is for permanent injunction and the question of whether the document was fabricated or not cannot be decided until the issues are framed and decided in the main suit.

4. Heard Sri S.Srinivasa Rao, learned counsel for the petitioner and Sri A.S.C.Bose, learned counsel for the respondent.

5. Chapter XI of IPC deals with the offence for giving false evidence and offences against public justice. For initiating prosecution for the said offences, the procedure contemplated in Section 195 r/w 340 of Cr.P.C. has to be followed.

6. Section 195 of Cr.P.C. mandates that no Court can take cognizance of any offence punishable under Sections 193 to 196, 199, 200, 205, 211 and 228 of IPC, when such offence is alleged to have been committed in, or in relation, to any proceeding in any Court, except on the complaint in writing of

that Court, or by such Officer of the Court, whom the Court may authorize in writing in this behalf or some other Court to which that Court is subordinate. Section 340 of Cr.P.C. requires that before an application/complaint is made under Section 195 of Cr.P.C., the Court initiating such a complaint has to form an opinion that it is expedient in the interest of justice that an enquiry is made into any offence referred to above, which appears to have, been committed in or in relation to a proceeding in that Court or in respect of a document produced or given evidence in a proceeding in that Court. Section 340 of Cr.P.C. also stipulates that such an opinion has to be formed after the preliminary enquiry if any, if thought necessary, is conducted.

7. The Judgments of the erstwhile High Court of Andhra Pradesh in ***K.Rajagopala Rao vs. P.Radhakrishna Murthy***¹ and ***Sadi Srinivasa Reddy vs. Sadi Rama Devi and another***² essentially set out the same principle. The Hon'ble Supreme Court in ***Prithish vs. State of Maharashtra and others***³ also held that the procedure to be followed in such complaints is that the Court where the fabricated document has been produced should conduct a preliminary enquiry into the matter and after conducting such enquiry, the Court may forward a complaint if it forms an opinion that the complaint needs to be made in this regard. The Hon'ble Supreme Court

¹ 2002 (3) ALT 513

² 2005(2) ALT (CrI.) 55 (A.P.)

³ (2002) 1 Supreme Court Cases 253

had also cautioned that the said preliminary enquiry, if at all necessary, is only for the purpose of formation of an opinion and not for purpose of arriving at any finding as to whether person against whom such an allegation has been made, is guilty or not.

8. In the present case, an allegation has been made against the respondent that the said respondent has fabricated a deed of sale. Once such a complaint has been made before the Court, it would be open to the Court to conduct a preliminary enquiry under Section 340 of Cr.P.C. to arrive at a conclusion, as to whether the said complaint requires further enquiry and whether it should be sent to criminal Court of appropriate jurisdiction for further investigation and prosecution.

9. In the present case, the trial Court refused to go into this at all and has taken the view that the application moved by the petitioner should be taken up only after issues had been framed and a decision had been taken on the question of whether document has been fabricated or not.

10. In view of the observation of the Judgments of the erstwhile High Court of Andhra Pradesh and the Hon'ble Supreme Court, the trial Court is required to look into the complaint made in the application and apply its discretion, as to whether the matter requires a preliminary enquiry under Section 340 of Cr.P.C. or not, depending upon the said exercise of discretion, it would be open to the trial Court to either

conduct the enquiry and decide whether any further complaint has to be forwarded or to decline to take up any such enquiry.

11. Since that exercise has not been carried out by the trial Court, it is necessary that the order dated 22.03.2021 is set aside and I.A.No.13 of 2020 is remanded back to the trial Court to take a decision in the light of the above observations of this Court.

12. Accordingly, the C.R.P. is disposed of. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

16.12.2021
SDP

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

CIVIL REVISION PETITION No.718 of 2021

16-12-2021

SDP