

IN THE HIGH COURT OF KARNATAKA AT
BANGALORE

DATED THIS THE 17TH DAY OF APRIL, 2013

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL PETITION No.5937 of 2011

BETWEEN:

1. Dr. C.G. Krishnadas Nair,
Aged about 71 years,
Son of Late E.D. Krishna Nampooripad,
Residing at No.2388/1,
16th "A" Main,
H.A.L. 2nd Stage,
Indiranagar,
Bangalore – 560 038.
2. Mrs. Aparna Krishnadas Nair,
Aged 36 years,
Daughter of Dr. C.G. Krishnadas Nair,
No.2388/1, 16th "A" Main,
H.A.L. 2nd Stage, Indiranagar,
Bangalore – 560 038.
Presently in U.S.

Represented by her
G.P.A. Holder,
Dr. C.G. Krishnadas Nair.

...PETITIONERS

(By Shri. M.A. Sebastian, Advocate)

AND:

Mr. M. Rajan,
Aged about 58 years,
Son of Marian,
Residing at Flat No.004,
Trinity Court,
55/1, Indiranagar Double Road,
Bangalore – 560 038.

...RESPONDENT

(By Shri. G. Balakrishna Shastry, Advocate)

This Criminal Petition is filed under Section 482 code of Criminal Procedure, 1973, praying to quash the proceedings initiated against the petitioners in PCR. No.31/2008 now registered as C.C.No.30217/2011 by the IV Additional Chief Metropolitan Magistrate, Bangalore.

This petition is coming on for Hearing this day, the court made the following:

ORDER

The petitioners are the father and the daughter. It transpires that there were transactions between the petitioners herein and the respondent, where they had jointly purchased the properties and the same were converted into house sites. Some of those sites were said to be alienated by the respondent

herein. On being questioned by the petitioner, the respondent had executed a registered release deed and thereafter has questioned the *bona fides* of the petitioner in having gifted the said property to his daughter and has alleged that there is criminal intent in such transfer having taken place. On the basis of the said complaint, the court below having taken cognizance, has issued process. It is that which is sought to be challenged in the present petition.

2. The learned Counsel for the petitioners would point out that it is an admitted circumstance that the properties had been acquired jointly by petitioner no.1 and the respondent and on the strength of a General Power of Attorney executed in favour of the respondent herein, as the petitioner was otherwise engaged in his profession. The respondent had chosen to alienate the property, which was jointly purchased, without the knowledge and consent of the petitioner. And immediately on learning about such transactions and when

he was questioned, the respondent having willfully executed a registered release deed in favour of the petitioner, in respect of the land that remained in tact, has now sought to allege a criminal offence in the subsequent transfer that had occurred as between himself and his daughter. His daughter is said to be a resident of the United State of America and she is working there. It is in this background that notwithstanding the civil proceedings having been instituted in respect of the very transactions by the respondent, a criminal case also is sought to be made out, when there is, on the face of it, no such criminal intention that could be demonstrated, as the release deed executed was a registered release deed and willfully executed by the respondent in respect of the properties that had been purchased jointly earlier. It is in this vein that the learned Counsel would take s this court through the record, to demonstrate that, at best, that there was a civil dispute, which is the subject matter of the pending civil suits and it could not be considered as giving rise to a criminal case.

3. The learned Counsel for the respondent, on the other hand, would submit that a transaction can give rise to both civil and criminal liability. Since the court has only now taken cognizance and issued process, the petitioners are armed with a defence that there is no criminal case made out as there is civil case pending. Hence, there is no warrant for interference by this court.

4. On the face of it, it is to be seen that it is not in dispute that the respondent had willfully executed a registered release deed in favour of the petitioner. However, it is sought to be contended that the execution of the release deed was on a misrepresentation made by the petitioner and that since his daughter was not an agriculturist and could not acquire the agricultural land, it was to enable her to do so, only if the property in question was transferred in her name in the first instance and therefore, to facilitate the second petitioner to acquire agricultural land, the transfer had taken place and

petitioner no.1 had misused the circumstance to appropriate the property and not to retransfer the property, as was originally agreed. If this contention of the respondent is taken to its logical conclusion, it would only demonstrate that there was, at worst, a breach of promise by the first petitioner, which would give rise to a claim for damages or for recovery of properties, which has been illegally withheld by the petitioner, in respect of which, there is admittedly a civil suit filed by the respondent. Therefore, the criminal intent that is sought to be urged and canvassed is absent and hence, the proceedings instituted against the petitioners in CC No.30217/2011 are misconceived.

Consequently, the petition is allowed. The proceedings in CC No.30217/2011, before the IV Additional Chief Metropolitan Magistrate, Bangalore, are quashed.

**Sd/-
JUDGE**

nv