

03.12.2015
Complainant
For orders

ORDER

This is a private complaint filed by the complainant against the accused for the alleged offences u/s.405, 406, 415, 417, 420 r/w 34 of IPC.

2. Heard submissions of advocate for the complainant. He would submit to refer the matter for investigation to the jurisdictional police station.

3. Perused the averments of the complaint. According to the complainant she, accused No.2 and 3 are members of Hindu joint family. One Sri.Siddhoji Rao was the head of the family. He had one son and 4 daughters. It is stated that, the said Siddhoji Rao acquired several movable and immovable properties during his life time as stated in the schedule. Siddhoji Rao died intestate leaving behind his son and daughter as legal heirs. His only son Ganesh Rao got married the complainant. After the death of Siddhoji Rao the name of Ganesh Rao came to be entered into the record of rights with respect to Sy. No.160/1 & 160/2. After the death of Ganesh Rao the name of the complainant was entered in the RTC. Smt.Saroja Bai W/o Late Siddhoji Rao had executed a Will in favour of accused No.1, 2 and 3 & another. It is alleged that, at the influence of accused No.1 to 3 Smt.Saroja Bai executed this Will. The said Will is questioned by the complainant on several grounds. A suit is also pending at O.S. No.40/13 against accused No.1 to 3 before Ramanagara Court. It is alleged that, accused No.1 to 3

influenced Saroja Bai to execute the Will to defeat the rights of the complainant. It is further alleged that, accused have committed offence of criminal breach of trust, cheating etc.

4. This is a special court exclusively dealing with the offences covered u/s.403 to 409 of IPC. If none of the offences covered u/s.403 to 409 of IPC are disclosed, this court has no jurisdiction to entertain the complaint in respect of other offences. Now the question for consideration is whether on going through the averments of the complaint offence of criminal breach of trust is constituted or not. Admittedly, there is a property dispute between the parties and the question is execution of Will deed dated 25.3.2011 by Saroja Bai is valid. It is a civil right.

5. In order to attract the offence of criminal breach of trust, two essential conditions are necessary. One is entrustment with the property and second is dishonest misappropriation of the property. It is not known under what circumstances property was entrusted to the accused by the complainant. There is clear distinction between the property bequeathed under Will and entrustment as stated u/s.405 of IPC. In my view these two necessary elements are totally absent in the complaint. Under these circumstances, offence of criminal breach of trust is not disclosed nor constituted. As far as other offences are concerned, there is averments to the effect that accused have cheated the complainant etc. When any offence of criminal breach of trust is not disclosed in the complaint, it is proper to get the remedy for the complainant from the Jurisdictional Court. It is submitted that, the offence has been

committed within the jurisdiction of J.P.Nagar police Station. Jurisdictional court is 5th ACMM Court, Bangalore. It is just and proper to transfer this case before 5th ACMM Court. Accordingly, I proceed to pass the following :

ORDER

- 1) Office is directed to transfer the entire records before 5th ACMM Court, Bangalore i.e. jurisdictional court.
- 2) Complainant is directed to appear before the 5th ACMM Court and seek remedy with respect to other offences.

(Venkataraman Bhat)
IV Addl.CMM, Bengaluru.