HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.7109 of 2011

ORDER:-

This is a Criminal Petition filed, under Section 482 Cr.P.C., by the petitioners/A.1 and A.2 requesting to quash the proceedings in C.C.No.266 of 2010 on the file of the VII-Metropolitan Magistrate, Cyberabad at Hayatnagar, which arise out of a complaint filed by the 2nd respondent alleging offences punishable under Sections 420 and 423 IPC.

2. The admitted facts are that the land situated in Sy.No.340/AA of Ragannaguda village, Hamlet of Turkyamjal village, Hayatnagar Mandal, Hyderabad East to an extent of Ac.2-07 cents was purchased by the petitioners jointly under a registered sale deed dated 01-11-2001 vide document bearing No.9078 of 2001. The vendors of the petitioners have brought the said property under a registered sale deed dated 30-05-1984. Thereafter, the petitioners having purchased the land applied for mutation of land in their favour. Accordingly, after due enquiry, the land purchased by the petitioners were mutated in their favour by the revenue authorities on 22-07-2004 vide proceedings No.B/1238/2003. Ever since the date of purchase the petitioners are said to have been in possession and prior thereto their vendors are in possession of the property. About more than seven years thereafter the petitioners have sold the self-same property to second respondent for a total consideration of Rs.60 lacs under a registered instrument dated 19-05-2008 vide document No.3631/2008. At that time, out of total consideration of Rs.60 lacs, the fact is that the second respondent paid cash sof Rs.30 lacs to A.1 towards his share of consideration and for the remaining consideration of Rs.30 lacs payable to A.2 it is said that certain cheques were issued by the 2nd respondent in favour of A.2. Those cheques appeared to have been presented by A.2 for encashment somewhere in June, 2009. Those cheques were bounced and consequently the proceedings were initiated

under Section 138 of the Negotiable Instruments Act by issuing statutory notice on 19-07-2009.

3. Nearly four months thereafter the 2nd respondent filed a complaint before the learned VII-Metropolitan Magistrate, Cyberabad, and it was referred to police under Section 158 Cr.P.C., for investigation and consequently the same was registered as Cr.No.666 of 2009. The allegations made by the 2nd respondent are that after having purchased the property when he went to the revenue officials for getting the land mutated in his favour, to his surprise he found that the land do not exist and his vendors viz., the petitioners 1 and 2/A.1 and A.2 have no authority or title to sell the subject land to 2nd respondent. Even on physical verification, the 2nd respondent claims that when he went he has not found the land there and the boundaries of the land which are mentioned in favour of the 2nd respondent do not exist on the ground. Having realised that the 2nd respondent was cheated at the hands of the petitioners/A.1 and A.2 it is alleged that a panchayat was convened wherein the petitioners/A.1 and A.2 are alleged to have confessed that they have sold the property without any authority or title.

4. Learned Counsel appearing for the petitioners submits that a bare reading of the complaint *prima facie* do not make out any offence of the cheating as alleged and that the dispute, if any, between the parties is purely of civil in nature. Learned Counsel further submits that it is not as though the petitioners have brought the property and immediately tried to sell it so as to impute any criminal *mens rea* on their part in disposing of the property having knowledge that the title suffers from any defect. Admittedly, the petitioners have brought the property under a registered instrument for a valuable consideration as long back as on 01-11-2001 and they held as its owners till 2008. During the interregnum, the petitioners have even obtained mutation proceedings. If really there was any suspicion or any doubt in the mind of the petitioners, they would not have approached the revenue authorities for mutation of the land, which

they bought. Learned Counsel further submits that as a matter of fact if what the 2nd respondent says is true, it is they who have been cheated at the hands of their vendors if really the property, which bought on 01-11-2001 was already sold by their vendors to Chandra Sekhar Reddy long back in 1992. Learned Counsel further submits that the fact that the present complaint came to be filed four months after the 2nd petitioner initiated the proceedings under Section 138 of the Negotiable Instruments Act clearly shows that the act of 2nd respondent in pursuing remedy in a criminal forum is not *bona fide*. Learned Counsel further submits that even if the entire contents of the charge sheet and the complaint are read and accepted in entirety to be truthful, the ingredients of criminal offences such as cheating are not at all attracted. In support of this contention, he placed reliance on the following decisions:-

(i) **Harmanpreet Singh Ahluwalia and others v. State of Punjab and others**[1]**;**

(ii) **V.P.Shrivastava v. Indian Explosives Limited and others**[2]**;**

(iii) **V.Y.Jose and another V. State of Gujarat and another**[3]**; and**

(iv) **Devendra and others v. State of Uttar Pradesh and another**[4]**.**

5. On the other hand, learned Counsel appearing for the 2nd respondent submits that it is a clear case where the petitioners having knowledge about the defect in the title and being fully aware of the same, have disposed of the property to the 2nd respondent and the 2nd respondent having reposed full confidence and faith in the petitioners, has purchased the property for a valuable consideration and as a matter of fact not only part with a sum of Rs.30 lacs to the 1st petitioner, but also spent about Rs.8 lacs towards registration and also issued certain cheques for Rs.30 lacs in favour of the 2nd petitioner. Learned Counsel further submits that there is a clear admission on the part of the accused

before the elders that they had knowledge about the title being defective and that deliberately with an intention they sold the property to the 2nd respondent. It is further contended that having sold the property to 2nd respondent/complainant, the petitioners/accused have made a representation to the revenue authorities in 2005 which clearly show that the petitioners/accused do not have valid title to sell the property. It is contended that though the dispute appears to have tapping of title dispute but the record clearly discloses that the petitioners/accused have cheated the 2nd respondent/complainant by selling the land which is inalienable and it was very much within the knowledge of the petitioners/accused.

6. The point for consideration is as to whether the criminal prosecution launched against the petitioners/accused *prima facie* do not make out an offence of cheating so as to quash the same?

7. **Point:-** The facts which are either admitted or are not seriously controverted may firstly be noticed.

8. The dispute in respect of land admeasuring Ac.2-07 cents in Sy.No.340/AA situated at Ragannaguda village, Hamlet of Turkyamjal, Hayatnagar Mandal. The 2nd respondent/*de facto* complainant purchased the said land from the petitioners/accused under registered sale deed bearing document No.3631/2008, dated 19-05-2008.

9. The petitioners/accused in turn purchased the said land under registered sale deed bearing document No.9078 of 2001 dated 01-11-2011 from G.Devender Reddy, Shyam Sunder Reddy, Sudhakar Reddy, Srinivas Reddy, Narsamma and Shailaja Reddy. Devender Reddy and other vendors of the petitioners/accused in turn purchased the said land from Shaik Abu Turab, Mohd.Hyder Ali and 16 others under registered sale deed dated 30-05-1984.

10. Long prior to Abu Turab and others selling the land, the revenue authorities issued Certificate of Ownership under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, in favour of one Pai Reddy Ram Reddy S/o.Bakiah in respect of the

total extent of Ac.6-36 guntas of land in Sy.No.340 in file No.B/403/75, dated 28-06-1976. The original pattedars of the said lands were Abu Turab and others in Sy.No.340 which was left towards their share. From out of that share of land, the vendors of the petitioners/accused purchased from Abu Turab and others under the registered sale deed dated 30-05-1984. Out of that land, an extent of Ac.2-07 cents was purchased by the petitioners/accused under registered sale deed dated 01-11-2001.

11. As against the above, the same property was sold by 38-E Tenancy Certificate Holders in favour of Chandrasekhar Reddy, Rajasekhar Reddy, Manohar Reddy, Mahender Reddy and B.Dharma Reddy under registered sale deed dated 20-07-1992 deriving the title from the 38-E Certificate issued by the revenue authorities.

12. In that view of the matter, the purchase of the land by Devender Reddy and others under registered sale deed dated 30-05-1984 from the original pattedars is not valid.

13. The allegation is that the petitioners/accused who were residents of the same village are very much aware of all these developments and they could not have validly purchased the property under registered sale deed dated 01-11-2001 which, in fact, was sold by the Certificate Holders on 20-07-1992.

14. The fact that the said transaction took place under registered instruments is not in controversy. The contentious issue is as to whether the petitioners/accused who have purchased the disputed land in 2001 were aware about the 38-E Certificates and the subsequent alienations by the Certificate-holders and knowing fully well the said aspect, they inducted the 2nd respondent/complainant to purchase the land for a valuable consideration of Rs.60,00,000/-under registered sale deed dated 19-05-2008.

15. It is also not controverted that the said property was sold by the petitioners/accused to the 2nd respondent/complainant for total consideration of Rs.60,00,000/-. Out of which, Rs.30,00,000/- was paid

by the 2nd respondent/complainant in cash on the date of the sale deed which fell to the share of the petitioner/A.1. For the remaining Rs.30,00,000/-, the 2nd respondent issued post-dated cheques in favour of the petitioner/A.2 and which when presented were dishonoured and consequently, the petitioner/A.2 has initiated proceedings under Section 138 of the Negotiable Instruments Act by filing complaints bearing C.C.Nos.210 of 2010 and 142 of 2010. Thereafter, the 2nd respondent/complainant filed the present complaint alleging that he has been deceived and cheated by the petitioners/A.1 and A.2 by making him believe that they have valid title to alienate the land in Sy.No.340/AA and believing them, the respondent/complainant has purchased the same. It is further alleged that the enquiries made by the 2nd respondent after purchase revealed that there do not actual exist any land on the spot and that they are all made into plots. It is claimed by the 2nd respondent/complainant that at the time of purchase, the petitioners have shown him a barren land saying that it is part of Sy.No.340. Out of trust, confidence and faith in the petitioners/accused, the 2nd respondent purchased the property.

16. Learned Counsel appearing for the petitioners/accused and the respondent/complainant have relied upon various authorities of the Supreme Court and as a matter of fact, there is no dispute insofar as the legal aspect is concerned. Section 482 of the Code of Criminal Procedure serves the salutary purpose viz., a person should not undergo harassment of litigation for a number of years although no case has been made out against him. The complaint or the charge sheet should disclose *prima facie* material for continuing the criminal prosecution and if a bare reading of the material placed on record of a criminal Court do not disclose any criminal offence, continuation of the criminal proceedings are liable to be quashed. The Court at this stage cannot take upon itself the task of appreciating probable evidence on record, a roving and indepth enquiry into the allegations cannot be made.

17. In **State of Haryana and others V. Bhajan Lal and others**[5], the Supreme Court laid down the following categories of cases by way of illustration wherein the power under Section 482 Cr.P.C., can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice:-

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
> (7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. It is also well settled by catena of decisions that for establishing the offence of cheating, the complainant is required to show that the accused

had fraudulent or dishonest intention at the time of making promise or representation. A guilty intention is an essential ingredient of the offence of cheating. *Mens rea* on the part of the accused must be *prima facie* established. It should be shown that there was deception of a person either by making a false or misleading representation and fraudulently or dishonestly inducing any person to deliver any valuable property or security. It is also established fact that mere failure to perform the promise cannot be said to be attracting the ingredients of the offence punishable under Section 420 IPC. The Court in exercise of its jurisdiction under Section 482 Cr.P.C., cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Quashing of criminal proceedings is a power which should be exercised sparingly and with circumspection and that too in rare cases, the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complainant.

19. Adverting to the facts of the present case, as stated above, what is required to be seen is as to whether at the time when the petitioners/accused sold the land to the 2nd respondent/complainant, he had knowledge about the defects in the title and the fact of the very same land already having been sold in 1992 by others and they had any fraudulent intention to deceive the complainant.

20. So far as the contention of the petitioners/accused is concerned, the fact is that they purchased the said land in 2001 and got it mutated in their name in proceedings No.B/1238/2003, dated 22-07-2004. Thereafter, they sold the same land to the 2nd respondent on 19-05-2008. It is also fact that at the time of transaction, half of the consideration was paid by the 2nd respondent/complainant and for the remaining half, cheques were issued and subsequently, they were dishonoured, for which, the petitioners/accused issued statutory notices to the 2nd respondent and another and thereafter filed complaints under Section 138 of the N.I.Act. Thereafter, the complainant filed the present complaint alleging that he

has been deceived by the accused by playing fraud and selling the land to him. The case of the accused is that before purchase, the 2nd respondent/complainant has verified all the link documents and even visited the land and only on being fully satisfied, purchased the same. In the sale deed executed by the petitioners/accused in favour of the 2nd respondent/complainant on 19-05-2008, there is a covenant to the effect that the petitioners/accused have the absolute rights to sell the schedule property having marketable title.

21. As against the above, the contention of the 2nd respondent/complainant is that there are several circumstances which *prima facie* establish that the petitioners/accused were fully aware about their lack of title in the lands and had deliberately and suppressing the material information have sold the land to the 2nd respondent for valuable consideration of Rs.60,00,000/-. There are circumstances, which go to show that the petitioners/accused were aware about the nature of the title and the facts which clearly show that they had no marketable title in the property. *Prima facie,* they are:-

(i) The petitioners/accused purchased the land from the legal heirs of G.Hanumanth Reddy under registered sale deed dated 01-11-2001. In the said sale deed, the vendors of the petitioners/accused have traced their title to the sale deed dated 30-05-1984 said to have been executed by Shaik Abu Turab and others. The vendors of the petitioners/accused having purchased the land on 30-05-1984, they entered into an agreement of sale for the same land with the petitioners/accused on 27-02-1985. It is also mentioned in the sale deed that another agreement of sale was executed by the vendors of the petitioners/accused on 20-02-1988 in respect of the same land. What could be gathered from the recital of the said sale deed is that the vendors of the petitioners/accused having purchased the land on 30-05-1984 have entered into an agreement of sale for the said land within nine months thereafter. For the reasons unknown, the agreement of sale dated 27-02-1985 was not finalized into a sale deed and just before the expiry of three years period, the vendors of the petitioners/accused have entered into another agreement of sale with the petitioners/accused on 20-02-19889. Thereafter, the petitioners/accused filed O.S.No.786 of 1996 against their vendors ostensibly for specific performance of the contract. That suit ended in compromise before the Lok Adalat on 09-10-2001. Only thereafter, the vendors of the petitioners/accused have executed the sale deed in favour of the petitioners/accused on 01-11-2001.

(ii) The petitioners/accused having purchased the land from Devender Reddy and Shyam Sunder Reddy and others on 01-11-2001 have entered into Development Agreement in respect of the same land in favour of Ravula Venkat Reddy and A.Ram Narsimha Reddy. This is on 10-11-2006. Firstly, the said Development Agreement has been executed by not only the petitioners/accused who have already purchased the land from Devender Reddy and Shyam Sunder Reddy and others five years back, but the said Development Agreement is also executed by Devender Reddy and Shyam Sunder Reddy who by then could not be said to have any interest in the said land, they having already been sold it five years prior thereto. That apart, in the Development Agreement, which is of November, 2006, and two years prior to the sale deed executed by the accused in favour of the complainant, there were certain recitals, which *prima facie* show that the petitioners/accused were aware about the complications in the title of the land which they purchased. For instance, clause (2) of the Development Agreement stipulates that Venkat Reddy and Ram Narsimha Reddy in whose favour the Development Agreement was executed were fully aware about the litigation between the first party to the Development Agreement viz., the petitioners/accused and their vendors with the third parties and other disputes pertaining to the land under the agreement. Clause (4) of the Development Agreement stipulates that all the disputes should be settled by the end of January, 2007 and clause (5) stipulates that the petitioners/accused and their vendors have agreed to register Ac.1-00 of land in favour of the second party after settling the disputes with the third parties. What could be *prima facie* said about it is that even before the petitioners/accused have sold Ac.2-07 guntas of land in Sy.No.340/AA, they entered into Development Agreement with two others persons and they agreed to register Ac.1-00 of land from out of it in favour of the developer.

(iii) The petitioners/accused have purchased the land under registered sale deed on 01-11-2001. On the next day i.e., on 02-11-2001 there was memorandum of understanding in between the petitioners/accused and their vendors, which was renewed on 08-02-2006 i.e., about two years prior to the sale deed in favour of the 2nd respondent/complainant.

(iv) According to the 2nd respondent/complainant, long prior to the petitioners/accused purchased the land on 01-11-2001 from their vendors, the said land was already sold on 20-07-1992 under registered document No.8331 of 1992 by the 38-E Ownership Certificate-holders in favour of other persons.

(v) The petitioners/accused were aware about these developments and also the fact that the land which they sold to the 2nd respondent on 19-05-2008, some other persons have been trying to develop the lands making into plots and sell the same and also make the constructions. This fact is borne out from the representation made by the 2nd petitioner /A.2 on 29-04-2008 to the Sarpanch of the Gram Panchayat. This application was made by A.2 just about 20 days prior to the petitioners/accused sold the land to the 2nd respondent. In the said representation, the 2nd petitioner/A.2 informed the Sarpanch of the Gram Panchayat that certain unauthorised persons have created fake layouts over an extent of Ac.2-07 guntas in Sy.No.340/AA and they may come to the Sarpanch for obtaining permission for constructions. It is also mentioned therein that such fake layouts in respect of the said land have landed in the hands of the petitioner/A.2 and challenging the said layouts, the petitioners/accused have approached the District Collector, Chairman of HUDA and District Panchayat Officers for examining the said layouts and cancel the same. This representation of the petitioner/A.2 shows that twenty days prior to the petitioners/accused sold the land to the 2nd respondent/complainant, they were aware about the existence of certain layouts in respect of the same land and that land being made into plots and sold to different persons. That is what the allegation of the 2nd respondent/complainant, is. According to him, even prior to the petitioners/accused sold the land to him, the said land was already made into plots and sold to different persons and by suppressing the said fact, the petitioners/accused have shown him some other barren land as being part of Sy.No.340 and sold the same to him.

(vi) On 05-06-2005 i.e., nearly three years prior to the petitioners/accused sold the land to the 2nd respondent/complainant, it appears that one Dharma Reddy filed a complaint before the Deputy Collector, Hayathnagar Mandal in respect of the land in Sy.No.340. To that complaint, the petitioner/A.2 filed a counter which shows that the petitioners/accused were aware about the land which they purchased from Devender Reddy and others on 01-11-2001 was sold to some others in the year 1992 and the petitioners/accused have stated in the counter that by fraud that sale deed was got executed. In June, 2005 itself the petitioners/accused had represented before the Deputy Collector that they purchased Ac.2-

07 guntas in Sy.No.340/AA under registered sale deed dated 01-11-2001. From this application made by the petitioner/A.2 to the Deputy Collector in June, 2005, what could be *prima facie* deciphered is that they were aware about the existence of sale deed of the year 1992 in respect of the same land said to have been executed by the original 38-E Certificate-holders.

22. Learned Counsel appearing for the 2nd respondent/complainant therefore submits that the above facts and several other aspect which would be brought out during the course of trial, it can be said that the petitioners/accused have deliberately played fraud on the respondent/complainant by selling the land over which they have no alienable rights. Learned Counsel submits that at this stage, a roving enquiry or appreciation of the evidence to be produced cannot be gone into and what is all that is required to be seen is as to whether the contents of the complaint or the charge sheet *prima facie* makes out a triable case so as to allow the case to be proceeded to its logical conclusion and nothing less.

23. Having carefully perused the entire material on record, I am of the opinion that *prima facie* it is a fit case where the trial should proceed so that all the facts will come out during the course of trial. There are no grounds to hold that a bare reading of the contents of the complaint and the charge sheet do not disclose a cognizable offence and that the criminal proceedings is manifestly attended with mala fides or with an ulterior motive and is a counter to the four Criminal Cases filed by the petitioners/accused under Section 138 of the N.I.Act against the 2nd respondent/complainant and another. There are no merits in the Criminal Petition and the same is liable to be dismissed. Needless to say that the observations made in this order should not in any way influence the trial Magistrate while adjudicating the criminal case.

24. In the result, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this case shall stand closed.

M.S.K.Jaiswal, J

11th September, 2015
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[1] (2009) 7 SCC 712

[2] (2010) 10 SCC 361

[3] (2009) 3 SCC 78

[4] (2009) 7 SCC 495

[5] AIR 1992 S.C., 604