

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9871 of 2015

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/A1 in Crime No.72 of 2015 on the file of the Station House Officer, Shivampet Police Station, Medak District registered against him for offences punishable under Sections 420 and 406 IPC, which is the outcome of the report of the 2nd respondent/defacto complainant and he sought for quashing of the crime proceedings supra.

2. The defacto complainant submitted report to police on 19.08.2015 against three persons including the petitioner herein, which reads, the defacto complainant who is an advocate by name M.Rajender Reddy resident of Flat No.105, Usha Residency, Suchithra X Roads, Hyderabad; A1-Srinivas Reddy, who is a businessman of flat NO.203, Arkhya Residency, NCL North, Kompally, Hyderabad (quash petitioner herein) and A2 Narsimha Reddy, resident of Flat No.501, Bhuvu Enclave, Spring Field, Suchithra X Roads, R.R. District, all the three with equal shares in the partnership, on 15.09.2012 purchased land in survey Nos.148, 149, 151 and 152 and that later A2 Narsimha Reddy out of his 1/3rd share therein, sold to the defacto complainant and A2 Srinivas Reddy equally and after that there was a boundary dispute between the original owners i.e., vendors of the complainant and A1 and A2 on one hand and on the other blood relatives of the original owners, which after they came to know insisted the vendors to settle the legal heir problem and cause measure the land fixing boundaries to get registered document by paying balance amount. However, vendors failed to comply and while so, the vendors by name Y.Gandhi, Y.V.Saibaba etc., and A1-Srinivas Reddy joined hands to deceive the complainant which he could understood, for the reason there is increase in the value of the land and A1 conspired with the vendors to deceive the complainant and that A1-Srinivas Reddy received some amount by saying that he could settle the boundary dispute with the vendors and later the defacto complainant when requested A1-Srinivas Reddy and the vendors, there was no proper response

and on suspicion, when he verified with the Sub-Registrar Office by obtaining E.C. it came to light that the property was already registered in the name of A1-Srinivas Reddy to the surprise of the complainant and when the complainant questioned A1-Srinivas Reddy, he pretended to get registration which may take further time to say he further tried to deceive the complainant and the vendors also without even any notice when the earlier agreement is in force, sold intentionally to deceive the complainant to A1-Srinivas Reddy and thereby to take action from which the crime registered for the offences punishable under Sections 420 and 406 IPC. On 19.08.2015 the complainant filed report against three persons by mentioning three names viz., B. Srinivas Reddy, Vanjari Gandhi Yedugani and Saibaba Yedugani Vanjari.

3. It is to quash the said crime proceedings, A1-B.Srinivas Reddy filed the present quash petition with contentions that from the very report of the complainant/2nd respondent that petitioner, A1 and one Narsimha Reddy purchased the land on 15.09.2012 and there is a boundary dispute between the vendors and their other blood relatives and in fact the land was not purchased as claimed by the 2nd respondent on 15.09.2012, but there was only an agreement for sale with land owners by paying some amount with a condition to pay the balance at the time of registration and there is no any notice even for registration by payment of balance by the 2nd respondent and there was nothing to attract the offence of cheating or breach of trust and in fact the complainant has not come forward for registration of the land by payment of the balance consideration despite repeated requests of land owners i.e., A2 and A3 and thereby the A1 having paid the balance consideration obtained the sale deed in his name and thereby there is no offence of cheating to attract and thereby proceedings are liable to be quashed. In support of his contention, the quash petitioner placed reliance on the expression of the Apex Court in ***Uma Shankar Gopalika vs. State of Bihar & Anr.***^[1] wherein the Apex Court held that the absence of allegation showing from the very inception that there was intention on behalf of the

accused to cheat, the offence under Section 420 no way could be made out but for to say the dispute is purely civil in nature in quashing the crime proceedings in the facts of the case in saying at best there is only a breach of contract for civil remedy. For the offence of cheating it must be shown intention to cheat as existing from the inception of entering into the contract and not a subsequent development after entering of the contract wherein the facts were that accused company purchased a truck on being financed by 'C' company on hire purchase agreement and subsequently truck was not traced and complainant 'C' submitted a claim before the insurance company and the accused company asked 'C' complainant to permit him to handle the insurance claim that was accepted by the "C" complainant on assurance given by accused company that out of the claim received he would pay arrears of the amount and despite the claim being allowed, accused company failed to pay the amount assured to the 'C' company, but it was held for no allegation of intention on behalf of the accused to cheat from the inception of the contract for the subsequent development if at all does not amount to cheating but for a civil remedy by suit as is purely tantamount to civil dispute.

4. Here the facts on hand from the very complaint averments show A1- Srinivas Reddy, one Narsimha Reddy and Complainant Rajender Reddy entered into an agreement for sale dt.15.09.2012 having paid part of the amount, to pay the balance amount at the time of registration and subsequently Narsimha Reddy given up his interest under the agreement to say thereby Srinivas Reddy and Rajender Reddy i.e., A1 and complainant entitled to the agreement rights equally to enforce and it is while so, the vendors under the agreement i.e., A3 and A4 were asked to settle the boundary dispute with their other blood relatives to get the registered document and instead of doing so, they executed sale deed in favour of A1- Srinivas Reddy. This is the accusation.

5. It is not even averred specifically that A1 from the inception of entering into contract for sale along with the complainant and Narsimha Reddy with vendors had any dishonest intention to cheat the complainant with deception from the inception and when that is lacking the remedy is civil in nature, is the

sum and substance of the expression of the Apex Court in ***Uma Shankar Gopalika***'s case(1 supra) in saying a subsequent development of deception with intent to cheat not prone to attract the offence under Section 420 IPC defined under Section 415 but for a civil remedy. It is not even an averment of any entrustment of the sale agreement to A1 with authority to obtain sale deed jointly and there from committed breach of such a trust. Once the averments in the report are very clear and discloses no intention from the inception of entering sale agreement and there is no entrustment, both the offences won't attract, there is nothing more from reading of the report to continue the crime proceedings but for to say remedy is of civil in nature.

6. Having regard to the above discussion and following the expression in ***Uma Shankar Gopalika***'s case(1 supra), the crime proceedings are liable to be quashed against the quash petitioner.

7. Accordingly, the Criminal Petition is allowed quashing the proceedings in Crime No.72 of 2015 on the file of the Station House Officer, Shivampet Police Station, Medak District registered against the petitioner/A1 for offences punishable under Sections 420 and 406 IPC. The bail bonds, if any, produced by the petitioner/A1 shall stand cancelled.

8. Consequently, miscellaneous petitions pending if any shall stand closed.

Dr. B.SIVA SANKARA RAO, J

22nd December, 2015.

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[\[1\]](#) 2005(1) SCC 336