

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.4170 OF 2012

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ORDER:

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This Criminal Petition is filed under Section 482 of Cr.P.C. by A.1 and A.2 seeking to quash the proceedings in FIR No.163 of 2012 on the file of Station House Officer, Naredmet Police Station, Malkajgiri, Cyberabad, Ranga Reddy District registered for the offences punishable under Sections 420, 406, 120B of IPC.

The facts of the case are as follows:

The complainant being the builder entered into the agreement with petitioner No.1-A.1 to develop a plot owned by the petitioner No.1 at Lalaguda village as per the advice of petitioner No.2-A.2 and in terms of agreement cum GPA dated 23.7.2009, the complainant paid a sum of Rs.10.00 lakhs on two different dates to petitioner No.2 on behalf of petitioner No.1 towards advance and caution deposit. But they failed to handover the possession of the said plot. When the complainant insisted them to return the deposit amount of Rs.10.00 lakhs, they offered him to sell a flat No.201 that stands in the name of A.1 for a sum of Rs.25.00 lakhs and asked him to give three cheques in favour of A.1 for another sum of Rs.10.00 lakhs in connection with said transaction. Believing their words, he gave three cheques for 13,72,000/-. In collusion with A.2, A.1 issued a notice on 20.10.2010 under Section 138 of Negotiable Instruments Act stating that the said cheques were bounced. Thus both the accused dishonestly induced the complainant and after receiving the amounts, cheated him. On a private complaint filed by the complainant, the Magistrate referred the same under Section 156(3) Cr.P.C. and the same was registered as F.I.R.No.163 of 2012.

It is the case of the petitioners that even the entire allegations made by the complainant are assumed to be true, the same does not attract an offence under Section 420 and 406 IPC. That apart the fact remains that in a different transaction, the cheques issued by the complainant were presented and the same were bounded for insufficient funds and in connection with the said transaction, the petitioners initiated prosecution against the de facto complainant herein for an offence under Section 138 of Negotiable Instruments Act and same was also ended in conviction. The said transaction also concerned with the same amount. The complaint of the present de facto complainant also reveals the fact that he was forced to give three cheques in favour of the first petitioner herein. If the case of the petitioners is taken into consideration that the cheques were bounced and the de facto complainant herein was convicted for an offence under Section 138 of Negotiable Instruments Act, the allegation of the complainant about the payment of the said amount by way of cheque cannot be believed. Furthermore, as rightly pointed out by the learned counsel for the petitioner, the entire transaction even if admitted to be true, no offence is made out against the petitioners herein.

This Court is of the view that if there is a transaction in connection with transfer of property or development of property and if there is a promise to sell the property and failure on the part of the petitioners to fulfil the same, the complainant is at liberty to prosecute the matter before the civil Court for specific performance of the same. Furthermore, the de facto complainant has not filed any document to show that such transaction took place between the petitioners and the de facto complainant. In the circumstances, this Court is of the view that the impugned

proceedings against the petitioners is liable to be quashed.

In the result, the Criminal Petition is allowed and the impugned proceedings in F.I.R.No.163 of 2012 on the file of Station House Officer, Neredmet Police Station, Malkajgiri Mandal, Cyberabad are hereby quashed as against the petitioners herein.

Consequent thereto, the Miscellaneous Petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

06.07.2015

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