

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.11972 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioner/A1 seeks to quash the proceedings in Cr.No.459 of 2014 of Afzalgunj PS, Hyderabad.

2) The *defacto* complainant lodged a report with Station House Officer, Afzalgunj which is registered as Cr.No.459 of 2014 for the offence under Section 420 r/w 34 IPC. The allegations are that A1 and A2 sold Flat No.203, 2nd Floor, Lakshmi Leela Homes, situated in Bibisaheb Maqta, Peerzadigua Gram Panchayat, Ghatkesar Mandal, R.R.District to one Dilip Sachadev by making him to believe that the built up area of flat is 975 sq. feet inclusive of common area and car parking area vide sale deed dated 08.06.2011. The purchaser purchased the flat by availing the loan from DHFL Vysya Housing Limited, Abids Branch, Hyderabad by mortgaging the said flat and later he committed default in repaying the loan resulting in Bank invoking SARFAESI Act. When the mortgaged property was put to action sale *defacto* complainant purchased the same and obtained physical possession. After that when he took up measurements of the flat to his utter shock he came to know it was less than 900 sq. feet inclusive of common area as against assured area of 975 sq. feet inclusive of common area. Further, as against the promise of original vendors to provide marble flooring and two coatings of plastering, no marble flooring

was done but tiles were erected. So also, no second coat of plastering was done as mentioned in the work order. Thus, the accused who are the original owners have cheated.

The investigation is reported to be pending.

3 Denying the allegations, learned counsel for petitioner sought for quashment of proceedings on the main plank of argument that the *defacto* complainant is not the direct purchaser from both the accused and there existed no privity of contract between them so as to impute any *mala fides* against them. The complainant purchased the flat in auction under “*as is where is basis and as is what is basis*”. Therefore, if there are any deficiencies in the area or defects in the structure noticed by defacto complainant, he has to settle the same with Bank who brought the property to the auction sale and with its owner but not the vendors of the borrower. He thus argued that continuation of proceedings would amount to abuse of process of law and sought for quashment.

4) Per contra, 1st respondent/defacto complainant who personally appeared in the matter, vehemently argued that he is questioning not only the structural defects but the difference in the plinth area including the common area as originally promised by the original vendors and who have ultimately delivered to their purchaser who is the borrower in this case. The accused are certainly answerable for the vast difference in the plinth area and their *mala fides* and the deceiving intention of the accused can be decided only after thorough investigation by the police. He

thus prayed to dismiss the petition.

5) In view of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT**: Upon perusing the record and hearing both sides, I find force in the submission of *defacto* complainant. It is true that he is not direct purchaser from the accused and he only purchased in auction sale conducted at the instance of DHFL Vysya Housing Limited under SARFAESI proceedings. However, on that count alone the criminal proceedings cannot be quashed holding that there is no privity of contract. The main grievance of the respondent/complainant is that apart from some deficiencies in execution of work i.e. not laying marble flooring and applying two coating of plastering, there is a vast difference in the plinth area between proclamation and actuality. This aspect, in the considered view of this Court, has to be explained by the original owners and their guilt or innocence can be determined only after a thorough investigation by the police. Therefore, as the matter stands, it is not a fit case to quash the proceedings.

7) Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 25.03.2015

Murthy