

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

CrI.P.No.9332 of 2009

ORDER

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This petition under Section 482 Cr.P.C. is filed by the petitioner/accused seeking to quash the proceedings in C.C.No.556 of 2007 on the file of Chief Metropolitan Magistrate, Vijayawada, Krishna District, for the offences punishable under Sections 408 and 420 IPC and under Section 28 of Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, against him.

2. The facts, in brief, are as follows;

The second respondent/complainant, which is Rishik Resident Welfare Society, Gollapudi, filed a complaint alleging that the petitioner/accused having obtained permission for construction of 20 flats in Rishik Residency Apartment had actually constructed 40 apartments. It is alleged that though the petitioner was residing in cellar, he registered the flat as well as generator room in the name of his wife showing that they are in ground floor. Therefore, the petitioner being a builder of flats had deviated from the plan and not completed the construction work worth about Rs.4 lakhs and violated the provisions of Section 8 of Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 (for short 'the Act'). Hence, the complaint.

3. Learned counsel for the petitioner/accused contended that one Vellanki Nagabhusana Rao is the original owner of the land and obtained permission from the Vijayawada Urban Development Authority (VUDA) for construction of stilt, ground and four floors and the petitioner is only the civil contractor for construction of

flats in the said land. He further submits that as per the provisions of the Act, the violations, if any, have to be answered by the said owner and not the petitioner and as a matter of fact, the VUDA also issued notices to the said owner. Thus, he prays to quash the proceedings against the petitioner.

4. A perusal of the material on record shows that the VUDA had issued a show cause notice to one Vellanki Nagabhusana Rao on 17.12.2004 alleging violation of the provisions of A.P.Urban Areas (Development) Act, 1975, for which he gave a reply on 14.02.2005, but no action has been taken by the VUDA. Hence, he filed W.P.No.5648 of 2005, wherein this Court directed the respondents therein to consider the explanation submitted by him and pass appropriate orders thereon within two weeks. That apart, challenging the said notice issued by the VUDA, said Nagabhusana Rao also filed O.S.No.522 of 2005 on the file of Senior Civil Judge, Vijayawada. Along with the said suit, he filed I.A.No.575 of 2005 and obtained an injunction against the VUDA.

5. While the matter stood thus, the allegations in the complaint and the charge sheet do not reveal that the petitioner/accused was only responsible for the violations of having constructed total 40 flats as against the sanctioned flats by VUDA and also for non-completion of works. Since the notice was issued by the VUDA against one Nagabhusana Rao for the alleged violations, the occupants of the apartment ought to have filed a complaint against the said promoter/builder. The petitioner/accused is only a contractor for construction of flats as per the directions of the promoter and there is no privity of contract between him and the subsequent purchasers. Therefore, the petitioner/accused is not responsible for the alleged violations or for non-completion of

works, if any.

6. In that view of the matter, this Court is of the view that the present complaint against the petitioner for the offences punishable under Sections 408 and 420 IPC and under Section 28 of the Act is not maintainable.

7. The Criminal Petition is, accordingly, allowed and the proceedings in C.C.No.556 of 2007 on the file of Chief Metropolitan Magistrate, Vijayawada City, are quashed against the petitioner/accused. Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M.S.K.JAISWAL, J

9th September, 2015
sj