

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION Nos.3801, 3802 and 3804 of 2015

COMMON ORDER :

These Criminal Petitions are filed with respect to C.C Nos.426 of 2015, 424 of 2015 and 425 of 2015 respectively, on the file of the V Metropolitan Magistrate, at Gannavaram, Krishna District. The sole petitioner in Crl.P No.3801 and 3804 of 2015 is the 1st petitioner in Crl.P. No.3802 of 2015 by name Sk.Inthiyajuddin and he is accused No.7 in all three respective cases and the 2nd petitioner in Crl.P. No.3802 of 2015 is A8 by name Mohd. Farooq; they sought to quash the proceedings covered by the charge sheet with accusation for the offences of cheating that were taken cognizance by the learned Magistrate respectively in three Criminal cases, saying the dispute is purely civil in nature and covered by three contract sale agreements. In Crl.P. No.3801 of 2015, the said Sk.Inthiyajuddin claimed purchased the property from accused Nos.1 and 2 under contract for sale (non-possessory) dated 17.08.2007 for Rs.56 lakhs having been paid by cash of Rs.55,50,000/- and the balance payable is only Rs.50,000/-. In Crl.P. No.3802 of 2015, on even date the petitioners/ accused Nos.7 & 8 claimed purchased the land an extent of 4663 Sq.yds under contract for sale (non-possessory) document No.5650 dated 17.08.2007 for an amount of Rs.69,95,000/- for which an amount of Rs.68,50,000/- having been paid in cash and the balance payable is only Rs.45,000/-.

Whereas, in Crl.P. No.3804 of 2015 he stood as attester for the sale transaction, according to him accused Nos.1 and 2 sold the land to one Kshathri Leela Bai, W/o.Muralidhar Singh for an amount of Rs.28,20,000/- on even date 17.08.2007 under non possessory contract of sale, for which Rs.27,50,000/- having been paid and the balance payable is only Rs.70,000/-.

2) In support of the said submission, learned counsel for the petitioners placed reliance on the expression of the Apex Court in ***Uma Shankar Gopalika vs State of Bihar and another***^[1] in the last lines of para No.6, it was held as follows:

“It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.”

3) Heard learned counsel for petitioners and the Additional public prosecutor representing the 1st respondent —State before admission and before ordering any notice to 2nd respondent —defacto complainant in all the three cases respectively. Perused the material on record.

4) The principle laid down in the expression supra of the Apex Court on the scope of 420 IPC is that every breach

of contract would not amount to cheating and only where there was any deception played at the very inception, it would amount to cheating. If the intention to cheat has developed later, the remedy is civil in nature. In that expression it was on facts from the very FIR there is no mention of any allegations of dishonest mind of the accused to cheat, the FIR proceedings were quashed by the Apex Court as won't survive.

5) Here it is not the case. From the reports given by the de facto complainant respectively, it clearly speaks particularly naming said accused as colluded with other persons i.e., accused Nos.1 and 2 in creating fake and fabricated documents.

6) On perusal of three respective contract for sales produced by the learned counsel for petitioners supra, it clearly shows out of a huge valuable consideration respectively, the purchasers claimed to have paid several lakhs in cash and by showing paucity amounts out of sale consideration remained due, apart from other facts.

7) Having regard to the above factual matrix of the case, as the material falls short for this Court to admit the Criminal Petitions, the same are disposed of giving liberty to the petitioners to file applications before the trial Court under Section 239 Cr.P.C before hearing on charges if any grounds for discharge only from the Prosecution material vide ***State of Orissa vs. Debendra Nath Padhi***^[2] and

therefrom the trial Court shall hear and decide on own merits
uninfluenced by the observations herein.

8) As a sequel, miscellaneous petitions, if any filed in
the Criminal Petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.06.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) (2005) 10 SCC 336

[\[2\]](#) AIR 2005 SC 359