

HON'BLE SMT JUSTICE ANIS
CRIMINAL PETITION No.3531 OF 2012

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), seeking to quash the proceedings against the petitioners-A.1 & A.2 in Cr.No.57 of 2012 of Dundigal Police Station, Cyberabad.

2. The petitioners herein are A.1 & A.2, respondent No.1 is the *de facto* complainant in the above said crime. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the above said crime.

3. The origin of the case is that Dundigal Police registered a case basing on the complaint given by the *de facto* complainant against the petitioners-A.1 & A.2 and other three persons (A.3 to A.5) in the above said crime for the offences punishable under Sections 406, 420 & 506 of the Indian Penal Code, 1860 (for short 'I.P.C') on the allegation that the accused lured the *de facto* complainant stating that they have started a partnership firm in the name and style of 'M/s.Sri Siddhartha Constructions' and shown beautiful offers in affordable prices. Believing the version of the accused, the *de facto* complainant paid a net cash of Rs.3,50,000/- and Rs.12,67,000/- by obtaining loan from ICICI Bank. The accused registered the semi furnished flat in favour of the *de facto* complainant. In the month of October 2008, when the *de facto* complainant visited the flat, to his utter surprise, he found that except walls, there was no progress in the construction work. When he contacted the accused, they did not heed to him, but threatened him that they will kill him if he claims any further from them. As such, the *de facto* complainant filed the complaint.

4. Being aggrieved by the act of the *de facto* complainant, the petitioners, who are A.1 & A.2 filed the present petition to quash

the proceedings against them, on the ground that they are innocent persons; that they have duly registered the flat in favour of the *de facto* complainant as per the agreement, and as such, they have not committed any offence as alleged by the *de facto* complainant; that the allegations made by the *de facto* complainant are purely civil in nature; that even if there is any alleged breach of obligation on their part, the remedy to the *de facto* complainant is elsewhere, but not to launch criminal prosecution; that the allegations made by the *de facto* complainant are false, fabricated and concocted for the purpose of the present case and would clearly reflect that the petitioners-A.1 & A.2 have been deliberately implicated in this case for some extraneous reasons and the allegations did not constitute any offence as claimed by the *de facto* complaint. Therefore, prayed the Court to quash the proceedings against them in the said crime.

5. The learned counsel for the petitioners-A.1 & A.2 argued that the *de facto* complainant gave a complaint to the police stating that second petitioner-A.2 along with others are the partners of first petitioner-A.1, started developing new venture of residential complex in the name and style of 'Sri Sidhartha Towers' in plot Nos.38 & 39 admeasuring 406 Sq. Yards in Survey Nos.133 & 135 of Bachupally village, Quthbullapur Mandal, Ranga Reddy District; that the *de facto* complainant agreed to purchase plot No.G-2 in the ground floor for a total consideration of Rs.15,50,000/-; that after receiving the sale consideration, they had executed the registered sale deed in favour of the *de facto* complainant; that if really, petitioners-A.1 & A.2 contravene any conditions in the agreement dated 11.07.2008 and sale deed executed by them without providing any amenities and without completing the works in the flat, the remedy available to the *de facto* complainant is to approach the civil Court for the purpose of breach of contract; that

the *de facto* complainant ought to have file the suit for specific performance of contract and prayed the Court to allow the petition by quashing the proceedings against them in Cr.No.57 of 2012 of Dundigal Police Station, Cyberabad.

6. On the other hand, the learned counsel for the first respondent-*de facto* complainant argued that after registering the sale deed on 24.07.2008, for semi furnished flat, the first respondent visited the site in the month of October, 2008 and found there is no progress in the construction nor any further construction activities are existing at the site and when he visited the petitioners-A.1 & A.2 and other partners about the completion of his work in the plot, they were dodging the matter. It is also argued that when the *de facto* complainant approached the petitioners-A.1 & A.2 and other partners, they insisted the first respondent-A.1 for a compromise to settle the dispute between them amicably and the same was reduced into writing as memorandum of understanding, wherein the petitioners-A.1 & A.2 and others compromised to pay Rs.25,00,000/- as lumpsum, so that first respondent-*de facto* complainant will give up his rights in the flat. It is also argued that first petitioner-A.1 issued cheque for Rs.25,00,000/- and when it was presented, the same was returned on 10.03.2012. Therefore, it is a fit case, where petitioners-A.1 & A.2 are liable for punishment for the offences punishable under Sections 406, 420 & 506 I.P.C.

7. Now, the point for determination is:

Whether the petitioners/A.1 & A.2 has made out any valid or sufficient grounds for quashing the proceedings in Cr.No.57 of 2012 of Dundigal Police Station, Cyberabad against them as prayed for or not?

8. **POINT:** A perusal of the record shows that the

de facto complainant is working in a hospital industry as Administrative Manager for Remedy Hospitals, Hyderabad. Petitioner No.1 is a firm and petitioner No.2 is one of the partners along with others. They have started a partnership firm in the name and style of 'M/s. Sri Siddhartha Constructions' and started developing a new venture in the residential complex in the name and style of 'Sri Siddhartha Towers' situated at Plot Nos.38 & 39, admeasuring 406 Sq. Yards in Survey No.133 & 135 of Bachupally village, Quthbullapur Mandal, Ranga Reddy District. The *de facto* complainant agreed to purchase the G-2 in the ground floor in the said venture for a total sale consideration of Rs.15,50,000/-. But, paid an amount of Rs.3,50,000/- initially and thereafter, he obtained loan from ICICI Bank and paid the same to the petitioners. The petitioners executed the sale deed in favour of the *de facto* complainant for the Semi Finished Flat on 24.07.2008. According to the *de facto* complainant, in the month of October, 2008, when he questioned the petitioners and other partners about the non-progress of work of the flat, they have dodged the matter. Hence, he filed a private complaint against the petitioners and other three partners of 'Sri Siddhardha Constructions'.

9. The main grievance of the petitioners is that the *de facto complainant* is having remedy elsewhere, since it is purely civil in nature; that the *de facto* complainant cannot launch criminal proceedings against them; and that the *de facto complainant* deliberately implicated the petitioners for extraneous reasons. It is an admitted fact that after receiving a private complaint, the Dundigal police registered the case in Cr.No.57 of 2012 and issued the First Information Report. According to the petitioners, the relief claimed by the *de facto* complainant is basing on a breach of contract as such it would not constitute a criminal offence. On the other hand, the main contention of the first respondent-*de facto*

complainant is that when he contacted the petitioners and other three partners, they threatened him with dire consequences and threatened to kill him. Further, they have cheated him without executing the entire work of the entire flat, except walls, there is no progress on the construction and due to lapse on the part of the petitioners, the ICICI Bank, from where he obtained the loan was also proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short 'the SARFAESI Act').

10. Thus the material on record shows *prima facie* that after paying sale consideration, the *de facto* complainant has received unfinished flat from the petitioners and others. Further, whether the petitioners cheated the *de facto* complainant or not and whether the petitioners threatened the *de facto* complainant with an injury, are to be investigated by the police during the course of investigation. Therefore, I am of the view that at this stage it is not a fit case to quash the proceedings against the petitioners in exercise of powers under Section 482 of Cr.P.C.

11. Accordingly, the Criminal Petition is dismissed. The miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

ANIS, J

Date: .02.2015
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