HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.135 of 2015

ORDER:

The petitioners/A.1 to A.3 are seeking quashment of the proceedings in Crime No.7/2015 of Sangareddy Town P.S, Medak District.

2) The *defacto* complainant is the husband of the petitioner/A.1. A.2 is the father and A.3 is the brother of A.1. The complaint allegations are that marriage between *defacto* complainant and A.1 took place on 08.08.2002 when at that time the *defacto* complainant was working as Software Engineer at Hyderabad and subsequently he got job in U.S.A and later he shifted to Canada. His case is that while he was working at Hyderabad, he purchased house site with his earnings in the name of A.1 and later also all the accused extracted amounts from him on the false promise that they will acquire the properties in his name but they did not do so. The accused entered into conspiracy and claimed all the properties purchased as that of A.1. It is also the case of complainant that A.1 never cohabitated with the complainant and she always used to quarrel with him. A.1 executed a power of attorney in favour of A.2 to sell the properties purchased with the monies of *defacto* complainant. Thus all of them have committed the acts of criminal conspiracy, cheating, criminal breach of trust, etc. Due to the mischief played by all the accused a cloud was cast on the title of the complainant and

hence he filed O.S.No.138 of 2011 in the Court of District Judge, Rajahmundry for declaration that he is the absolute owner of the properties and later the suit was transferred and pending before the X Additional District Court, Gurajala.

In the light of above allegations, FIR No.7 of 2015 was registered by the Police of Sangareddy Town P.S for the offences under Section 406, 417, 420, 423 r/w 120B and 34 I.P.C and investigation is pending.

3) Denying the FIR allegations learned counsel for petitioners submitted that *defacto* complainant and A1 are living separately since January 2011 as he was harassing A1 mentally and physically and he did not take care of his wife and child and therefore, A1 gave report against *defacto* complainant and three others and charge sheet was filed in C.C.No.124 of 2013 on the file of Judicial First Class Magistrate, Piduguralla, Guntur District for the offences under Sections 406, 420, 498A, 506 IPC and Sections 3 and 4 of Dowry Prohibition Act. A1 also filed DVC No.2/2011 on the file of Judicial First Class Magistrate, Piduguralla against the *defacto* complainant wherein learned Magistrate granted maintenance of Rs.19,000/- p.m. for A1 and her child. He argued that the *defacto* complainant is not paying maintenance regularly and harassing them and the present complaint is filed by the *defacto* complainant only as a counter blast to the above cases.

4) Learned counsel further submitted that the allegations

with regard to the properties are not correct and they are all absolute properties of the first accused and she executed GPA in favour of 2nd petitioner/A2 only to manage them. In spite of it *defacto* complainant filed O.S.No.30 of 2014 (OS.No.138 of 2011) on the file of District Judge, Rajahmundry with all false averments and 1st petitioner/A1 is contesting the said matter by filing the written statement and no interim order was passed in that suit. Learned counsel would submit that 3rd petitioner/A3 who is the brother of A1 has nothing to do with the disputes between the parties and he is residing in Chennai and he is unnecessarily roped in the case. He submitted that even assuming that all the compliant/report allegations are true, they would at best reveal that the husband invested monies and got some properties in their joint names and later the wife and her father and brother betrayed him and claimed those properties as theirs and as such the matter pertains to civil nature and hence no element of criminality can be attached to the acts of accused. The continuation of criminal proceedings he submitted, would amount to abuse of process of law and cause harassment to the accused and hence FIR may be quashed.

5) Per contra, vehemently opposing the petition, learned counsel for 1st respondent/*defacto* complainant argued that the acts of the accused reveal that they conspired and blatantly cheated by usurping the properties purchased with the hard earned money remitted by him toiling in India and

abroad and therefore the criminal proceedings can well be continued against them. Learned counsel argued that if the FIR allegations *prima facie* disclose commission of offence, the High Court has to proceed entirely on the basis of such allegations and it should be reluctant to quash the proceedings. On this proposition of law she relied upon the following decisions.

1. ***A.Ramesh Babu vs. State of A.P.***[1]
2. ***Satvinder Kaur vs. State (Govt. of NCT of Delhi)***[2]

Learned counsel further argued that if same acts of the accused give rise to both civil and criminal proceedings, the criminal proceedings should not be quashed merely because of pendency of civil proceedings. In this context learned counsel relied upon the following decisions.

1. ***Kamaladevi Agarwal vs. State of W.B.***[3]
2. ***Vitoori Pradeep Kumar vs. Kaisula Dharmaiah***[4]

Learned counsel thus prayed to dismiss the application.

6) In the light of above arguments, the point for determination is:

"Whether the continuation of investigation in FIR No.7/2015 would amount to abuse of process of law so as to quash the same?"

7 a) **POINT**: It being a quash petition, the cardinal principle is that if the complaint allegations are presumably unchallenged and disclose a *prima facie* case, then the High Court must

be reluctant to quash the proceedings. Per contra, if the allegations do not disclose even a *prima facie* case but reveal only a civil litigation and remedy lies elsewhere, and the complainant with an ulterior motive tries to settle the scores using the criminal proceedings, then the Court upon coming to the conclusion that continuation of proceedings will amount to abuse of process of law, quash the proceedings.

b) Before probing whether the allegations in FIR No.7/2015 disclose any *prima facie* case against the accused or not the principles enunciated in the decisions cited by the learned counsel for 1st respondent/complainant shall also need to be ruminated. Cumulatively those citations would resonate that if the FIR *prima facie* discloses the commission of offence, the Court shall be reluctant to order quash and the High Court has to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the complaint. Another principle enunciated in the cited decisions is that merely because civil proceedings are pending, criminal proceedings shall not be quashed, if the acts of the accused invite both types of proceedings.

8) The relationship between the parties is not in dispute. Since some time the terms between *defacto* complainant and A1 seems not cordial and admittedly the 1st petitioner/A1 lodged criminal proceedings in C.C.No.124 of 2013 and DVC No.2 of 2011 on the file of Judicial First Class Magistrate, Piduguralla against the *defacto* complainant and others and

the same are pending. In this back drop when complaint allegations are perused, they narrate how the wife and her father and brother have allegedly cheated him in the matter of procurement of properties. Firstly, the complainant says that he purchased house site with his earnings from M/s. Raghavendra Real Estates on 03.02.2003 and nominally kept it in the name of first accused and so he is the owner of said property and first accused is only an ostensible owner and the sale deed is with him. Secondly, his allegation appears to be that some more properties were purchased with his amounts. They are open plot bearing No.4 to an extent of 200 square yards in KGR Enclave layout in Sy.Nos.415, 459, 460, 557, 558, 559 and 565 situated at Ameenapoora village, Patancheru Mandal, Medak District and A1 falsely claiming that those properties belong to her and she appointed second accused as her GPA to sell the plots. His ultimate claim is that all the accused conspired together and they are now trying to grab the properties purchased with his monies and hence he filed O.S.No.30/2014 (OS.No.138/2011) for a declaration that he is the absolute owner of those properties and the suit is pending.

a) These are precisely the complaint allegations. Now the point is whether they disclose *prima facie* accusation against the accused. Then perusal of plaint in O.S.No.30 of 2014 (OS.No.138/2011) would show that *defacto* complaint filed the suit seeking declaration of his title in respect of five items of properties. Admittedly, A1 filed counter and contesting the matter. In the written statement she staunchly denied the claim of plaintiff/*defacto* complainant and narrated the origin of those properties stating:

Item No.1 is concerned, she claimed that it is her exclusive property and it is in her own possession. Item No.2 is concerned, she claimed that said property was purchased with the dowry amount and other amounts received from defendant and her father and therefore, she is beneficial owner of item No.2. Item No.3 is concerned, same was purchased out of the fixed deposit amount given by her father for her benefit and out of the dowry received earlier and thus she is joint owner in respect of that property. Item Nos.4 and 5 are concerned, she contended that originally those items were purchased by her father by paying Rs.4,25,000/- under an agreement dated 14.06.2006 and documents were obtained in the joint names of plaintiff and A1 and thus she is the owner of items 4 and 5 and in joint possession with the plaintiff. Thus, essentially her claim is that most of the properties were acquired with the dowry amount and also amounts advanced by her father and they are not exclusive properties of the plaintiff and they never cheated him. The contention of defendant is briefly narrated as above, only to have comprehensive view over the respective claims over the properties since parties are not strangers but closely related and most importantly the *defacto* complainant and A1 are having fiduciary relationship.

9) Now, in the back drop of above facts, whether the properties acquired with the hard earnings of the complainant or with the dowry amounts and the amounts advanced by the father of A1 is a point which has to be decided in the trial in a civil case which is already pending. As the matter stands, there is no *prima facie* material to hold that all the accused conspired together and cheated the complainant. The element o f *mens rea* is not evoked from an honest reading of the compliant allegations. As such, in my considered view, continuation of the proceedings in FIR No.7/2015 would certainly amount to abuse of process of law on the one hand and harassment to the accused on the other. Therefore, in the considered view of the Court, it is fit case to quash the proceedings.

10) Accordingly, this Criminal Petition is allowed and proceedings in FIR No.7 of 2015 on the file of Sangareddy Town PS, Medak District are hereby quashed.

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

U. DURGA PRASAD RAO, J

Date: 23.01.2015

Note: L.R.Copy to be marked: Yes / No
(b/o)
Scs/Murthy

[1] 2012 (3) ALT (Crl.) 72 (AP)

[2] (1999) 8 SCC 728

[3] (2002) 1 SCC 555

[4] (2002) 9 SCC 581