HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.2428 OF 2012

O R D E R:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioners herein, challenging the order dated 14.08.2012, passed by the IV Additional Chief Metropolitan Magistrate, Hyderabad, in M.P.No.1136 of 2012 in C.C.No.1400 of 2010.

2. The revision petitioners herein are accused Nos.2 & 3, respondent No.1 herein is the complainant and respondent No.2 herein is the *de facto* complainant before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case of prosecution is that accused No.1 is the husband of accused No.2 and father of accused No.3. Due to acquaintance with the *de facto* complainant, accused No.1 induced her stating that he is the absolute owner of the house property bearing No.3-2-206 situated at Nimboliadda, Kachiguda, Hyderabad, and offered its sale. Believing the words, the *de facto* complainant owned the said property for a consideration of Rs.26,70,500/- under the registered sale deed dated 31.07.2009. Thereafter, accused No.1 fraudulently colluded with accused Nos.2 & 3 with malafide intention to cause wrongful loss to the *de facto* complainant gave a paper publication dated 13.10.2010 stating that accused Nos.2 & 3 are the joint owners of the said property and that property should not be purchased by anyone. Being aggrieved by the fraud committed by the accused, the *de facto* complainant lodged a report with Kachiguda Police against all the accused, which was registered as a case in Cr.No.184 of 2010 for the offence punishable under Section 420 read with 34 I.P.C. The said crime was numbered as C.C.No.1400 of 2010

on the file of IV Additional Chief Metropolitan Magistrate, Hyderabad.

4. Being aggrieved by the report given by the *de facto* complainant, accused Nos.2 & 3 filed M.P.No.1136 of 2012 before the IV Additional Chief Metropolitan Magistrate, Hyderabad, seeking their discharge stating that a false complaint was lodged against them by suppressing the pendency of the civil suit and injunction order passed in the civil suit with the ulterior motive to knock away the property; that they never involved in any conspiracy to cheat and misappropriate the alleged entrustment of funds and accused Nos.2 & 3 in order to protect their rights and their shares in the ancestral property i.e., house bearing No.3-2-206, Nimboliadda, got published a news item in the newspaper alerting the interested persons not to purchase the said property; that in fact, the *de facto* complainant never approached accused Nos.2 & 3 with a proposal to purchase the said house; that the matter is of civil nature and the civil suit is pending before the learned II Additional Chief Judge, City Civil Courts, Hyderabad, and only after injunction order was made absolute, this false complaint has been filed suppressing the true facts and the police, Kachiguda at the instance of the *de facto* complainant falsely laid charge sheet against them; that police never done investigation and did not file any material evidence to show the receipt of amount by them; that accused No.2 is the mother of accused No.3 and further, accused No.1 and his brother hatched a plan to knock away the property of accused Nos.2 & 3 without paying any consideration and therefore, prayed the Court to discharge them from the charges levelled against them.

5. The IV Additional Chief Metropolitan Magistrate, Hyderabad after considering the entire evidence on record, dismissed M.P.No.1135 of 2012 in C.C.No.1400 of 2010 on 14.08.2012.

6. Aggrieved by the said order passed by the trial Court, accused Nos.2 & 3 preferred the present revision case.

7. The learned counsel appearing for the revision petitioners/ accused Nos.2 & 3 argued that accused Nos.2 & 3 were charged with an offence punishable under Section 420 read with 34 I.P.C basing on a private complaint, given by the *de facto* complainant without any proper allegations and involvement of the offences by suppressing the pendency of the civil suit and injunction order subsisting against the *de facto* complainant; that accused Nos.2 & 3 never involved in the above offence and there is no entrustment of funds and conspiracy to cheat the *de facto* complainant; that accused Nos.2 & 3 protected their right of interest for their share in the ancestral house bearing No.3-2-206, Nimboliadda, Kachiguda, Hyderabad, and as such, they published the news item on 13.01.2010; that the *de facto* complainant never approached accused Nos.2 & 3 at any point of time to purchase the schedule house and not informed about the alleged sale transaction and kept silent for a long time; that accused Nos.2 & 3 after verification of the records and ascertaining the documents, filed civil suit on the file of the learned II Additional Chief Judge, City Civil Courts, Hyderabad vide O.S.No.111 of 2010; that the *de facto* complainant made her appearance though her counsel and filed a written statement in the said suit; that after due enquiry, the Court made the injunction order dated 16.07.2010 absolute against the *de facto* complainant; that after passing of the said order, the *de facto* complainant filed the private complaint against accused Nos.2 & 3; that the Investigating Officer without making any proper investigation filed the charge sheet into the Court in collusion with the *de facto* complainant; that there are no allegations levelled against accused Nos.2 & 3, whereas the sale consideration was taken by accused No.1 only from the *de facto* complainant; that the *de facto* complainant also filed a civil suit O.S.No.736 of 2011 for recovery of possession against accused No.1; that the *de facto* complainant already knocked the doors of the civil court for seeking remedy as the dispute between the parties is

civil in nature and relied upon the case law reported in ***Union of India v. Prafulla Kumar Samal and another***[1], wherein it is held as follows:

> *10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :*
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> *….*
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> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and largo however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

and finally prayed the Court to allow the revision case and discharge accused Nos.2 & 3 from the charges with which they were charged, by setting aside the order dated 14.08.2012 passed in M.P.No.1136 of 2012 in C.C.No.1400 of 2010.

8. Though notice was served on the second respondent, no representation was made on her behalf.

9. On the other hand, the learned Public Prosecutor for the State of Telangana argued that the trial Court rightly dismissed the petition M.P.No.1136 of 2012 on 14.08.2012; that accused No.1, who is the husband of accused No.2 and father of the accused No.3 sold the house to the *de facto* complainant and executed the registered sale deed in favour of the *de facto* complainant on 31.07.2009 for a sale consideration of Rs.26,70,500/- and dodged for delivery of the property on the ground of his ill-health; that the *de facto* complainant considering his request granted some time, but as accused No.1 failed to deliver the possession of the house, the *de facto* complainant filed a suit for recovery of possession of the said house in O.S.No.736 of 2011; that thereafter, the wife and son of accused No.1 filed suit O.S.No.111 of 2010 and obtained injunction order against the *de facto* complainant by suppressing the material facts; that thereafter, accused Nos.2 & 3 along with accused No.1 fraudulently or dishonestly colluded

with each other with malafide intention to cause wrongful loss got published a caution notice the newspaper dated 13.01.2010 stating that accused Nos.2 & 3 are the joint owners of the property and that property should not be purchased by anyone; that accused Nos.2 & 3 are claiming their rights in the property through a Will and thus, accused Nos.2 & 3 along with accused No.1 played fraud on the *de facto* complainant and therefore, the trial Court gave a right finding that there is a *prima facie* allegation in the criminal case, which cannot be gone deep into its veracity at this stage of the case and rightly dismissed M.P.No.1136 of 2012 for their discharge; that the said finding of the trial Court needs no interference and prayed the Court to dismiss the revision case.

10. Now, the points for determination are --

1. Whether the revision petitioners are entitled for discharge for the offence punishable under Section 420 read with 34 I.P.C, as prayed for not?
2. Whether the revision petitioners are entitled to set aside the order dated 14.08.2012 passed by the IV Additional Chief Metropolitan Magistrate, Hyderabad, as prayed for or not?

11. **<u>P O I N T S</u>**: A perusal of the record shows that the *de facto* complainant filed Cr.No.184 of 2010 for the offence punishable under Section 420 read with 34 I.P.C against the accused, which was numbered as C.C.No.1400 of 2010 on the file of IV Additional Chief Metropolitan Magistrate, Hyderabad, on the ground that accused No.1 offered the sale of house property bearing No.3-2-206, situated at Nimboliadda, Kachiguda, Hyderabad, and induced the *de facto* complainant by stating that he is the absolute owner and possessor of the property. He sold the same for about Rs.26,70,500/- and executed a registered sale deed in favour of the *de facto* complainant on 31.07.2009. Thereafter, accused Nos.2 & 3, who are wife and son of accused No.1 gave a caution notice in the paper on 13.01.2010 to the

intended purchasers claiming that they are the joint owners of the said property and therefore, not to purchase the same by anyone. The *de facto* complainant stated in the complaint that accused Nos.2 & 3 along with accused No.1 conspired together with a malafide intention to cheat the *de facto* complainant for their wrongful gain, as such she filed the complaint against the accused. When the matter is pending before the Court, accused Nos.2 & 3 filed M.P.No.1136 of 2012 for discharge on the ground that the

de facto complainant suppressed the pendency of the civil suit and the injunction orders passed in the civil suit and also denied that accused Nos.2 & 3 never involved in any conspiracy to cheat the *de facto* complainant. After hearing both sides, the trial Court dismissed the petition for discharge contending that *prima facie* allegations in the criminal case cannot be gone deep into its veracity at this stage of the case, unless there is a full fledged trial.

12. The only contention of petitioners/accused Nos.2 & 3 is that they have not conspired with accused No.1 in selling the property to the *de facto* complainant and on the other hand, they have a share in the ancestral property, which was purchased by the *de facto* complainant and as such, accused Nos.2 & 3 filed O.S.No.111 of 2010 on 22.10.2010 on the file of the II Additional Chief Judge, City Civil Courts, Hyderabad as there is a civil dispute pending between the parties, M.P.No.1136 of 2012 in C.C.No.1400 of 2010 is to be allowed.

13. There is no dispute about the principle laidown in the case law reported in ***Prafulla Kumar Samal's case*** (cited supra) relied upon by the counsel for revision petitioners/accused Nos.2 & 3. But, the facts and circumstances in the present case are different with the facts and circumstances of that case as accused Nos.2 & 3 in this case are none other than the family members of accused No.1 and accused No.1 sold the property, which was in dispute by inducing the *de facto* complainant stating that he is the absolute owner and possessor of the

said property though he had knowledge about the share of accused Nos.2 & 3 in the said property. These aspects have to be gone into the merits of the trial at the preliminary stage. Therefore, I am of the view that the petitioners/accused Nos.2 & 3 are not entitled for discharge from the charges levelled against them; that the trial Court rightly dismissed the petition and the findings of the trial Court passed in M.P.No.1136 of 2012 in C.C.No.1400 of 2010 dated 15.02.2007 needs no interference of this Court.

14. Accordingly, the Criminal Revision Case is dismissed confirming the order dated 14.08.2012, passed by the IV Additional Chief Metropolitan Magistrate, Hyderabad, in M.P.No.1136 of 2012 in C.C.No.1400 of 2010.

15. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 20.02.2015
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[1] (1979) 3 SCC 4