

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6447 of 2013

ORDER :

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This criminal petition is filed by the petitioners/Accused Nos.1 to 4 under Section 482 Cr.P.C to quash the proceedings in Crime No.65 of 2013 of Aize Police Station, Mahabubnagar District registered for the offence punishable under Sections 417, 420 read with 34 I.P.C.

2) The 1st respondent is the defacto-complainant who filed a private complaint in May/June, 2013 which is more than two months after the civil suit filed by him in O.S. No.31 of 2013 on the file of the Senior Civil Judge, GAdwal against the accused Nos.1 and 2 herein as defendants pursuant to the contract for sale dated 06.09.2005 in respect of Ac.9-23 guntas in S.No.479/A and E together claimed for Rs.4,00,000/- and stated paid entire sale consideration and claimed possession delivered with no stipulation for performance, but for on demand to execute sale deed claimed remained; further in plaint para No.5 averred that plaintiff has been sending messages to the 1st defendant through 2nd defendant for execution of sale deed and 1st defendant has been postponing and taking advantage of the hike in prices, the 1st defendant created in favour of the 2nd defendant registered sale deed dated 28.07.2012 bearing No.6309 of 2012 for the entire extent and thereby they are liable for cheating under Section 420 and 417 I.P.C and it is further pursuant to the plaint averments by reiterating in the private complaint that accused Nos.3 and 4 are attestors of the possessory sale agreement in favour of the complainant dated 06.09.2005 are privy to it. That is the only stray allegation so far as A-3 and A-4 concerned. In fact, there is nothing to rope the A-3 and A-4 with complicity to the crime. Thereby the crime proceedings so far as the alleged attestors/A-3 and A-4 are liable to

be quashed on its face.

3) So far as A-1 and A-2 concerned, they are defendants in the suit referred supra. It is important to note that the very averment in the plaint by the defacto-complainant, referred supra, at para No.5 at cost of repetition is that, it is through A-2 (2nd defendant/ complainant was sending word to A-1 (1st defendant) to demand for registration of sale deed to demand for registration of sale deed. The registered sale deed between A-1 and A-2 is on 28.07.2012, whereas the agreement of sale in favour of the complainant/plaintiff is dated 06.09.2005. Having left remained nothing more but getting of sale deed, there is no reason for the plaintiff/complainant to slept over till the suit filed in the year 2013 for 8 years practically, after date of said agreement. Even, there is no any notice issued for all the 8 years for registration of sale deed but for just prior to the filing of the suit only on 25.02.2013 by questioning the registered sale deed in favour of the 2nd defendant by the 1st defendant dated 28.07.2012. There is nothing to show by cogent proof giving of police report and if not taken sending a written report by registered post as per Section 154(3) Cr.P.C. The complaint is not even filed immediately. Civil remedy efficaciously already invoked. No doubt, a pending civil suit or matter appears to be a civil nature per se is not a ground on its face without dwelling into basic facts further for quashing the criminal proceedings. However, the factual back ground referred supra categorically shows besides the civil remedy invoked, there is nothing to attribute any knowledge specifically to A-2 in obtaining sale deed on 28.07.2012 from A-1, about the so called possessory unregistered sale agreement in favour of the complainant from A-1 dated 06.09.2005; though even a contract for sale required to be registered as per the A.P. Amendment to the Registration Act (4 of 1999) by Section 17(g) with effect from 01.04.1999 and further, there is also a Central Amendment to Section 49 of the Registration Act with effect from 24.09.2001 by Act 48/2001 which made compulsory registration of possessory sale agreement even for protection under Section 53-A of the Transfer of Property Act equally amended.

Further, the possessory sale agreement requires sale deed stamp as conveyance to impound properly and not for Rs.100/- only by collecting on Rs.60/- deficit since executed on Rs.40/- two stamp papers of Rs.20/- each.

4) Having regard to the above, practically there is no basis to implicate the 2nd accused also for obtaining registered sale deed to attribute notice, that too there is nothing to show A-1 was demanded through A-2 by complainant. Whether A-2 is a bonafide purchaser from A-1 and whether the agreement in favour of the complainant prevails over the sale deed in favour of A-2 is a matter required to be decided in the civil suit as a purely civil dispute that thereby cannot be a ground to attribute element of cheating to deceive the complainant by A-2 who is the vendee by registered sale deed supra.

5) Having regard to the above, the prosecution so far as A-2 to A-4 is unsustainable and liable to be quashed by left open any investigation so far as A-1 is concerned.

6) In the result, the petition is partly allowed by quashing the proceedings in Crime No.65 of 2013 of Aize Police Station, Mahaboob Nagar District in respect of A-2 to A-4 concerned and by left open to complete the investigation by police preferably within three months and file final report so far as A-1. In the meantime, A-1 shall not be arrested but for to call for investigation to cooperate. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

01.12.2015

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