## HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

## CRIMINAL PETITION No.7019 OF 2015

**ORDER:**

The petitioners are two accused (P.Anuradha-A.1 and P.B.Ramaswamy-A.2) of C.C.No.3 of 2015 on the file of the Addl. Junior Civil Judge, Srikalahasti, Chittoor district. The learned Magistrate has taken cognizance for the offences punishable under Sections 420,418,406,193 and 199 IPC which is outcome of a private complaint of the 2nd respondent i.e. referred to police, K.V.B.Puram for investigation by the learned Magistrate u/s.156(3) of Cr.P.C. The police after investigation, filed final report that was taken cognizance.

2. Heard the learned counsel for the petitioners/A.1 and A.2 so also the learned Public Prosecutor for State-1st respondent and also heard the learned counsel for the 2nd respondent-complainant.

3. The complaint averments speak that the complainant got house sites at Gajularamaram, Qutubullapur Mandal, Ranga Reddy district. He used to visit his sites. While he was in financial crisis, A.1 and A.2 supra being the neighbours to his house sites introduced themselves and maintained friendly terms and therefrom wanted to provide financial assistance to him which he was willing to take as he was in crisis and therefrom the A.1 and A.2 entered into contract with the complainant to give 24lakhs on 31.03.2010 and believing the words and promise of the accused, the complainant for security purpose as required by the accused, executed formal sale deed in favour of the A.1 for the house sites of Gajula Ramaram in Sy.No.199-A, 201-A, 202 to 204, 215,216 in part and plot No.187 with name and style venture Sriven enclave. It is further averred that he was paid the amount and there was MOU between the petitioners and the complainant dated 23.12.2010 and as per the terms of which, the complainant gave three post-dated cheques to A.1 for the purpose of

cancelling sale deed and to deliver back possession of the property to the complainant and later A.2 gone to Bombay for job purpose therefrom the accused persons are not available in native places however, surprisingly without intimation to complainant, A.1 filed cheque bouncing case before II Metropolitan Magistrate, Cyberabad, Ranga Reddy district, in C.C.No.938 of 2012 and sent notice to the complainant with wrong address and when complainant approached the A.1 and A.2 by demanding them to take the amount. It is while so, the accused persons voluntarily approached the complainant with elders with false representations executed undertaking in favour of complainant by receiving 4lakhs from complainant and on the same day accused persons demanded the complainant and obliging the same, the complainant transferred an amount of Rs.1,20,000/- from his account to the account of A.2 and A.1 and A.2 came to the native place of the complainant at Kothuru village, K.V.B.Puram Mandal, and demanded the complainant in all 12lakhs to discharge the bank debts and believing them and their representations, the complainant paid of 12lakhs and the same was even admitted by them in O.S.No.336 of 2013 on the file of the III Addl. District Judge, Ranga Reddy district, in their plaint page No.8. Further the A.1 requested the complainant over phone about remaining due and A.1 gave A.2's account number and therefrom complainant deposited Rs.9,00,000/- + Rs.80,000/- + Rs.20,000/-on different dates total of 10lakhs to the account of A.2. It is from which as per the complainant, he paid the principal amount and interest to the accused in total Rs.27,20,000/- which includes interest of Rs.3,20,000/- however, the accused persons with mala fide intention not cancelled the formal sale deed they obtained and also failed to deliver the property and to withdraw the cheque bouncing case and other cases, hence the complaint.

4. Along with the complaint, he filed 7 enclosures viz; certified copy of C.C.No.938 of 2012, certified copy of depositing payment receipts in

which State Bank of India, Kovvur branch, K.V.B.Puram Mandal, certified copy of undertaking executed by the A.1 in favour of the complainant, certified copy of plaint in O.S.No.336 of 2013, certified copy of Bank Statement given by the S.B.I., Kovanur branch, KVB Puram Mandal, C.D. of voice recording to the accused persons, typed copy of voice recording and deposition of 1st accused. The learned Magistrate referred the private complaint to police for investigation which order speaks as *"Complainant called present. Heard the complainant. This complaint is forwarded to the Station House Officer, u/sec.156(3) of Cr.P.C. on 27.08.2010."* The police registered the crime and filed final report by citing as many as 7 witnesses including Sub Inspector who registered the case and investigated and filed charge sheet. L.W.1 Mallikarjuna Reddy is the defacto-complainant, L.W.2 P.Venkateshwarlu shown as L.W.2 in the private complaint, L.W.3 M.Ramesh Reddy, also shown in the private complaint as L.W.3 apart from one Bikshapathi of Gajula Ramaram and R.Anjaneyulu of Kukatpalli. The police final report filed for the offences punishable under Sections 420,418,406,193 and 199 IPC speaks that initially the case referred supra of A.1 and A.2 being neighbours to the house sites of the complainant, from the furnishing loan of 24lakhs to the complainant and the complainant along with one Lakku Ramana Reddy, who were in possession, sold the house site in favour of A.1 for 24lakhs and executed registered sale deed on 31.03.2010 and thereafter when the accused started the construction, the 3rd party interfered and objected claiming right over the house site which is under dispute in Court and therefrom the accused demanded the complainant for return of money including the construction costs and for no money was paid by the complainant to accused but they entered into the M.O.U., dated 23.12.2010 for execution of cancellation of sale deed executed in favour of A.1 if he fails to settle the civil dispute with regard to the house site within 8 months and as per the MOU, the complainant has given 3 post-dated cheques to accused and as the money not adjusted to the complainant, he neither cancelled the sale deed nor paid the same within the period stipulated in the MOU and due to that A.1 filed cheque dishonour case against the complainant in C.C.No.938 of 2012 and later through the elders, A.1 having received part of the amount i.e. 4lakhs, given undertaking letter dated 14.11.2012 that they withdraw the cheque bouncing case and criminal case filed against the complainant after receipt of total amount. As per the complaint, there is transfer of 1.2lakhs into the account of A.2 on the same day but no evidence produced and later as per the complainant, he paid 12lakhs to accused as per their demand on different dates in November and December, 2012 but failed for which as per the complaint, he did not obtain any acknowledgment and as per the complaint further he deposited 9 lakhs and Rs.80,000/- +Rs.20,000/- into the bank account of A.2 with different dates and for that also produced no evidence. However, from that the complainant says for the 24lakhs paid with interest Rs.3,20,000/- in all Rs.27,20,000/- and despite it, the accused persons failed to re-convey the property. As per the police final report with reference to the facts as per the L.Ws.4 and 5-the mediators, the A.1 admitted about the receipt of money in the presence of them at Hyderabad though there is no document and thereby it constitutes the offences.

5. A.1 is P.Anuradha and A.2 is her husband(P.B.Ramaswamy) and A.1 is defacto-complainant in C.C.No.476 of 2012(94 of 2012-old) on the file of the I Spl. Magistrate, L.B.Nagar, Ranga Reddy district against the defacto-complainant-P.Mallikarjuna Reddy herein for the offences under Section 138 of the N.I.Act, and after contest the case was ended in conviction to undergo Rigorous Imprisonment for a period of two years and to pay a fine of 60lakhs of which 58lakhs awarded as compensation to the complainant-Anuradha. It is because of that civil suit O.S.No.336 of 2013 on the file of the II Addl. District Judge, Ranga Reddy is pending for recovery of 58lakhs and the 3 cheques issued were for total 55lakhs for dishonour of which after

statutory notice that was returned unserved from the execution, the complaint is filed.

6.The learned Magistrate in the conviction judgment referred supra to the entire present private complaint version of the defacto-complainant herein as accused in the cheque bouncing case including in saying as a formal sale however, he himself admitted the sale transaction in favour of said Anuradha, after receiving the consideration on transfer through bank thereby sale deed dated 31.03.2010 is not nominal or formal sale deed, it is duly executed and delivered possession conveying title and not to believe as security purpose of the borrowal. It is also observed that the cheques were given admittedly by the accused but for the contention as security. The Ex.P.7 agreement-cum-MOU, dated 23.12.2010 marked therein(C.C.No.476 of 2012) discloses that when said Anuradha brought to the notice of Mallikarjuna Reddy(accused therein) about the third party by name B.Umarani, came to the property and stopped construction being made by Anuradha by threatening to demolish and therefrom, Anuradha and her husband Rangaswamy demanded for return of the amount covered by sale transaction and accused Mallikarjuna Reddy agreed to refund and issued three post-dated cheques for final settlement and he failed to settle the civil dispute within six months with two months grace period enabling said Anuradha to present the cheques for realization and as accused Mallikarjuna Reddy failed to settle the civil dispute with Umarani in respect of the plot in dispute, the cheque bouncing case rightly filed for the cheques presented returned dishonoured. The Ex.D.2 (in C.C.No.476 of 2012)undertaking letter dated 14.11.2012 for 4 lakhs said to have been received by Anuradha from Mallikarjuna Reddy, and Mallikarjuna Reddy agreed to pay 20lakhs within two months and undertook to withdraw by Anuradha the civil and criminal case for saying he paid balance consideration or the cheque bouncing case not withdrawn or the cheque is misused in filing the case what Mallikarjuna Reddy-the accused propounded through D.W.2 witness is highly unbelievable of so called undertaking letter was torn into pieces and same letter attached and pasted and even admitted as he does not know why Ex.D.2 is prepared and as to what contents for no proof regarding its probative value to rely and even the amounts reflected in Exs.D.4 to 6 not reflected even in Ex.D.3 to rely in saying once there is MOU covered by Ex.P.7, no further need of obtaining so called Ex.D.2 by belying the said defence version. It is observed in the judgment further that in the plaint copy of O.S.No.36 of 2013 filed by Anuradha she mentioned that the defendant Mallikarjuna Reddy paid 12 lakhs towards interest besides fallen due 58 lakhs to say 55lakhs principal amount and 3 lakhs interest balance at 18%p.m. from September,2011 to February,2013 and the interest fixed also admitted by the accused Mallikarjuna Reddy, in the cheque bouncing case, the accused-D.W.1. It is in that background, what the present defacto-complainant Mallikarjuna Reddy filed private complaint in 2013 July. Even though C.C.476 of 2012 for cheque bouncing pending by then ripe for judgment since judgment delivered subsequently on 05.09.2013, shows in the background not a bona fide prosecution. Further, the M.O.U. even referred in the private complaint registered crime on reference by the Magistrate shows what is the amount due covered by the three cheques issued by him for 55lakhs and the cheque bouncing case for recovery of which is filed and the M.O.U. further undertaken by Mallikarjuna Reddy to settle the dispute with Umarani who raised objection to Anuradha for making construction pursuant to the sale deed obtained by Anuradha from Mallikarjuna Reddy.

7. Having regard to the above, there are bona fides in the present private complaint and the learned Magistrate did not apply his mind even to the M.O.U. contents before referring the private complaint to the police for investigation and even from the police final report

while saying it is not the sale deed executed for security to the lending but outright sale. However from the 3rd party raised a claim over the property disputing title in obstructing the construction, the M.O.U. was executed through elders to settle the dispute or to pay back the amount for re-conveying and it is for that, the cheques issued when presented returned dishonoured for which the cheque bouncing case is filed that was ended in conviction. In view of the factual background, prosecution against Anuradha and her husband(A.1 and A.2) including for the police to file charge sheet, won't survive but for to say it is purely a civil dispute added with criminal flavor with afterthought by the complainant that was not properly investigated by the police in their final report even to charge the accused without subsistence.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C.No.3 of 2015 on the file of the Additional Junior Civil judge, Srikalahasti, Chittoor district against the petitioners/A.1 and A.2. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

**Dr. B. SIVA SANKARA RAO, J**

**Date: 08-12-2015**
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