

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**Crl.A.No.1309 of 2014**

**ORDER :**

This appeal is filed under Section 378 (4) of Cr.P.C. questioning the order dt.08.10.2007 in S.R.No.4481 of 2007 on the file of Judicial Magistrate of First Class, Palakol, West Godavari District.

2. The appellant herein is the *de facto* complainant. He filed a complaint on 17.09.2007 against respondents under Section 190 (1) of Cr.P.C. alleging that respondents had committed offences punishable under Sections 420, 425, 406 and 409 r/w Section 34 of I.P.C.

3. The 1<sup>st</sup> respondent is the wife of 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent is the absolute owner of a vacant site of extent of 484.6 Sq.yds. in R.S.No.206/3 in T.S.No.967/3A and 967/1 situate at 17<sup>th</sup> Ward, Varidhanam Road, Palakol.

4. The gist of complaint was that 1<sup>st</sup> respondent executed an agreement of sale dt.19.05.2006 in favour of appellant agreeing to sell the above property for a sum of Rs.5,20,950/-; as per the terms and conditions of the said agreement Rs.50,000/- was paid at the time of execution of agreement and the balance amount of Rs.4,70,950/-

was to be paid on or before 05.07.2006; and if not, the *de facto* complainant has to pay interest @24% p.a. on the balance of sale consideration.

5. According to complainant, although he was ready with the balance sale consideration even prior to the stipulated date and intimated the same to respondents and asked them to receive the balance sale consideration, they did not do so; ultimately, they sold the property under three sale deeds, which were executed on 16.03.2007, in favour of different persons; that at the request of accused, the complainant had paid certain debts on behalf of 2<sup>nd</sup> respondent to M/s.Matruka Mutually Aided Co-operative Society Ltd., Palakol and also to Indian Bank; that there was mediation by elders 01.08.2007 wherein the accused were chided by elders and advised to execute registered sale deed in favour of complainant by receiving the balance sale consideration; that both accused with a dishonest intention to deceive and to gain illegally and to misappropriate the amount of plaintiff, received the sum of Rs.50,000/- as advance, and also made complainant to believe that they are indebted to Indian Bank, Palakol and the above Society, and made him pay amounts to them on behalf of accused; and therefore, they have to be prosecuted for offences under Sections 420, 425, 406 and 409 of I.P.C.

6. By order dt.08.10.2007, the Judicial Magistrate of

First Class, Palakol rejected the complaint holding that the remedy available to *de facto* complainant is to invoke Section 12 of Specific Relief Act, 1963 to specifically enforce the agreement of sale dt.05.07.2006 or to get refund of amount advanced from the accused and he can ignore the sale deeds, if any, executed in favour of third parties by accused during the subsistence of agreement of sale in his favour; that there is no question of entrustment of money to accused since under a contract between them, the complainant is alleged to have parted with the money and when there is breach of contract, the complainant cannot invoke criminal law; that if complainant pays amount on behalf of 2<sup>nd</sup> accused, who is not a party to the agreement of sale, he can as well sue him for refund of amount; and that there are no essential ingredients to invoke criminal jurisdiction and to entertain the said complaint.

7. It appears that questioning the said order, initially a Criminal Revision Petition was filed before the Sessions Court, Eluru, but the same was rejected on 21.02.2008 on the ground that the order in question cannot be challenged in Revision; and that the said Revision Petition is not maintainable as per a decision of this Court in Criminal Petition No.425 of 2004 dt.14.07.2006.

8. Thereafter, the present appeal was filed on 08.04.2009 with a delay of (454) days. The said delay

was condoned and the case has come up for admission to-day.

**9.** The learned counsel for appellant contended that the accused has cheated the appellant/*de facto* complainant and having agreed to sell the property to *de facto* complainant, accused had instead sold it to certain third parties; and the learned Magistrate had erred in rejecting the complaint made by appellant.

**10.** Under Section 190 Cr.P.C., a Magistrate “may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report on such facts; and (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence is being committed”.

**11.** In the present case, the facts narrated in the complaint indicate that there was an agreement of sale between accused and *de facto* complainant for sale of certain property belonging to 1<sup>st</sup> accused, and the accused are alleged to have committed breach of the said contract.

**12.** As rightly been held by the Court below, in the event there is breach of contract to sell immoveable property, the remedy of aggrieved party is to seek specific performance of agreement of sale by invoking Section 12

of Specific Relief Act, 1963, or to seek refund of amounts paid under the agreement.

**13.** Admittedly, this course of action has not been adopted by appellant. As regards the complaint that appellant had made certain payments to discharge debts of 2<sup>nd</sup> accused to Indian Bank, Palakol is concerned, it is open to appellant to seek refund of amounts paid on account of 2<sup>nd</sup> respondent from 2<sup>nd</sup> respondent. I am of the opinion that the learned Magistrate had rightly held that the essential ingredients to invoke criminal jurisdiction and entertain the complaint do not exist. Also the transaction in question was of the year 2007 and although appeal has been preferred in this Court in 2009 with a delay of (454) days, till this day the appellant has shown no diligence in getting the appeal listed for admission and also did not file any suit for specific performance of the agreement dt.16.03.2007. Therefore, it would be unjust to expose respondents to a criminal prosecution when the appellant's right to seek the relief of specific performance has also got time-barred. Therefore, I do not find any merit in the appeal. So the Criminal Appeal is accordingly dismissed.

**14.** Miscellaneous applications, pending if any in this Appeal, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 27-01-2015

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