

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.11390 of 2011

ORDER:-

The petition is filed under Sections 482 Cr.P.C., to quash the proceedings in C.C.No.500 of 2008 on the file of the X-Metropolitan Magistrate, Cyberabad at Malkajgiri.

2. The petitioner is A.2 in the case. The 2nd respondent is the complainant. He filed the private complaint which was referred to the police and accordingly F.I.R. in Cr.No.78 of 2008 was issued on 21-02-2008. During the course of investigation, no offence was made out against A.3 and A.4 who are said to be the attesting witnesses to the subsequent registered sale deed and A.5 being the Sub-Registrar of the Registration Dept and hence they were not charge sheeted. Investigating Agency having found sufficient material against A.1 and A.2, filed the charge sheet which is taken on file as C.C.No.500 of 2008.

3. The petitioner/A.2 seeks quashing of the complaint on the ground that the 2nd respondent/*de facto* complainant has taken recourse to the criminal process in gross abuse of the process of law, that absolutely no ingredients of either Section 420 IPC., or Section 447 IPC., are made out, that if at all there is any grievance, it has to be worked out in a Civil forum but launching of criminal prosecution by way of private complaint amounts to the abuse of criminal justice system and hence all further proceedings in C.C.No.500 of 2008 be quashed.

4. On the other hand, the contention of the 2nd respondent is that the investigation and the material on record clearly establishes that the petitioner/A.2 acting in the capacity of the Secretary of a Housing Society has sold the self-same plot to A.1 on 11-12-2007 even though that plot was sold to the 2nd respondent/complainant under registered sale deed dated 16-03-1981. This act was committed by the petitioner/A.2 inspite of there being a direction in the arbitral proceedings initiated by another plot-holder directing the Society not to take steps to cancel the sale deeds and declared the notices as null and void. Learned Counsel further submits

that the ingredients of the offences alleged are clearly attracted and the proceedings cannot be quashed.

5. Arguments of both sides were heard.

6. What is required to be seen is as to whether the plain reading of the complaint makes out any offence against petitioner/A.2 *prima facie* so as to continue the proceedings or whether absolutely there are no grounds for launching the criminal prosecution resulting in quashing of the Calender Case.

7. The admitted facts out-weigh the contentious issue. The facts that emerge from a perusal of the complaint, the charge sheet and the material produced show the following aspects:-

8. One Radhakrishna Cooperative Housing Society Limited who was the owner and possessor of land in Sy.Nos.296 and 297, Neredmet, Ranga Reddy District. The Society made the said land into plots. Plot No.110 was allotted to the 2nd respondent/complainant and the same was sold to the 2nd respondent under registered sale deed, dated 16-03-1981. The 2nd respondent was also inducted in possession. As per the terms of allotment and as per by-laws in clause Nos.10 to 13 and as per Section 40 of the A.P.Cooperative Societies Act, the said allotment was cancelled on the ground that the 2nd respondent did not construct the house within the stipulated period of two years from the date of execution of the sale deed. A general notice in the newspaper "The Hindu" was published on 02-01-2004 and a show-cause notice was issued by the Society 09-01-2004 to the 2nd respondent informing the 2nd respondent that the allotment of plot, membership and sale deed in favour of the 2nd respondent/complainant is cancelled. Thereafter, the petitioner/A.2 sold the same plot to A.1 under registered sale deed, dated 11-12-2007. In respect of the same plot, there was civil suit bearing O.S.No.507 of 2005 which was decreed on 28-04-2005 and E.P.No.44 of 2005 was filed for recovery of possession. Another member of the said Society and allottee of a plot bearing No.250, one Smt.C.Annapurna has initiated the arbitration proceedings before the Deputy Registrar/Divisional

Cooperative Officer, Ranga Reddy District, in ARC No.6/2004/G. The said allottee has raised the contentions before the Arbitral Tribunal similar to the one that has been raised by the 2nd respondent/complainant herein. After due enquiry, the Deputy Registrar of Cooperative Societies by order, dated 15-11-2004, held that the allegations that the present body of the Society of which the petitioner/A.2 herein is the Secretary has not been proved to be constituted contrary to any law. The authority further held that elections were held to the managing committee on 25-11-2003, in which the petitioner/A.2 and others were elected as office bearers for a period of five years. The Arbitral Tribunal also noticed that the allegations made therein that the Society was defunct, that the Society was not in existence, that the Secretary of the defunct Society is acting under fictitious circumstances, that there is no question of passing of the resolution, dated 02-01-2004, by the Managing Committee, since the Society was not in existence and that the actions of the petitioner/A.2/Secretary tantamount to cheating and punishable under Indian Penal Code are wild allegations without substance and evidence and hence rejected. The above specific allegations made by another plot-holder which are similar to that of the 2nd respondent herein were held to be wild allegations and without substance and evidence and hence they were rejected. The Deputy Registrar of Cooperative Societies in the final analysis declared the resolution of the managing committee dated 02-01-2004 and the notices were issued subsequently as null and void and restrained the Society from making any efforts to cancel the sale deeds.

9. In spite of the above directions of the authority, the petitioner/A.2 and others are said to have proceeded with cancelling the allotments and executing fresh sale deeds.

10. The contention of the petitioner is that the acts of the petitioner/A.2 or for that matter the Society cannot be brought within the contours of Indian Penal Code for the reason that when the authority acts in discharge of his functions and even if it is contrary to any of the rules or in

excess of its authority, that by itself do not amount to attracting the penal provisions of Section 420 IPC. There is sufficient force in this submission of the learned Counsel for the reason that if any authority is found to have acted in contravention of the rules and regulations, the remedy of an aggrieved person lies in a different forum but they cannot be said to have acted with an intention to cheat or by any deceitful means against any person.

11. In the instant case, admittedly, the plot bearing No.110 was allotted to the 2nd respondent and the same was also registered in his favour by the Society on 16-03-1981. As per the terms of allotment and the by-laws of the Society, an allottee has to construct the house within a period of two years. Apparently, the 2nd respondent did not initiate the construction of the house within the stipulated period. Therefore, the Society through its Secretary, who is the petitioner/A.2, has issued a paper publication cancelling the allotment in favour of such of the members who did not commence the constructions and also issued individual notices and one such notice was issued to the 2nd respondent/complainant on 09-01-2004 informing him about the cancellation of the allotment, his membership and also the registered sale deed in his favour. Apparently, the 2nd respondent/complainant has not initiated any action inspite of a general and specific notice from the Society cancelling the allotment for a period of nearly 5 years. The private complaint alleging the offences of cheating and trespassing was filed in February, 2008 when the allotment was cancelled as long back as in January, 2003. In between this period of five years, a suit came to be filed by one Shankaramma in O.S.No.507 of 2005 which was decreed and execution proceedings were also taken up in E.P.No.44 of 2005. This suit of Sankaramma, according to the 2nd respondent is a collusive but no steps whatsoever were taken by the 2nd respondent/complainant even though that suit was decreed as long back as on 28-05-2005. Only in February, 2008, the present private complaint is filed alleging that the acts of the petitioner/A.2 in cancelling the allotment, issuing notices and executing another sale deed in the year

2007 in favour of A.1 amounts to an offence punishable under Section 420 IPC.

12. Upon carefully perusing the entire material on record, I have no hesitation in holding that no criminal offence is *prima facie* made out against the petitioner/A.2 for proceeding with the criminal case. Even if what is alleged in the complaint is taken on its face, it do not amount to an offence punishable under Section 420 IPC., the essential ingredients of which are that there should be cheating, thereby dishonestly inducing the person so deceived to deliver any property to any person or to make, alter or destroy the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. The question as to whether the Housing Society from which the 2nd respondent purchased the plot in the year 1981 has become defunct or whether there was a validly held elections of the managing committee in 2003, in which the petitioner/A.2 was elected as Secretary cannot be adjudicated in a criminal forum. Since the petitioner/A.2 has acted in the capacity of the Secretary of a Housing Society and as firstly issued notice specifically and generally cancelling the allotment of a plot for violation of the conditions and thereafter having cancelled the allotment, sold the plot to another person can at best could rise civil action but under no circumstances the petitioner/A.2 can said to have acted in such a manner which attracts the penal provisions.

13. In view of the foregoing discussion, it is held that continuing the criminal proceedings against the petitioner/A.2 clearly amounts to abuse of process of law and therefore the same is liable to be quashed. The point is accordingly answered.

14. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner/A.2 in C.C.No.500 of 2008 on the file of the X-Metropolitan Magistrate, Cyberabad at Malkajgiri.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M.S.K.Jaiswal, J

2nd July, 2015

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