IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL PETITION NO. 5324 OF 2015

Between:

Smt. Indu Dalmia, and others

.. Petitioners

and

State of Andhra Pradesh
Rep. by Police Alipiri
Through its Public Prosecutor
High Court at Hyderabad for the State of
Telangana and State of Andhra Pradesh
and another

.. Respondents

DATE OF ORDER PRONOUNCED:

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

***THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+Crl. P. No.5324 OF 2015

% 01-09-2015

Smt. Indu Dalmia, and others

…. Petitioners

Vs.

$ State of Andhra Pradesh
Rep. by Police Alipiri
Through its Public Prosecutor
High Court at Hyderabad for the State of
Telangana and State of Andhra Pradesh
and another

…. Respondents

!Counsel for the petitioners : Sri N.Naveen Kumar

Counsel for the Respondent No.1 : Public Prosecutor
Counsel for the Respondent No.2 : K.Vinaya Kumar

<Gist :

>Head Note:

? Cases referred:

1. (2015) 1 SCC 513
2. (2015) 4 ALT 596 (DB)
3. (2014) 13 SCC 553
4. 1992 Supp (1) SCC 335
5. (2000) 2 SCC 636
6. AIR 2008 SC 1683
7. (2005) 10 SCC 336
8. (2006) 6 SCC 736
9. AIR 2008 SC 251
10. (2013) 6 SCC 740

11. (2009) 7 SCC 495
12. (2008) 14 SCC 1
13. (2013) 3 SCC 330
14. (2014) 10 SCC 663
15. (2013) 9 SCC 293

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5324 OF 2015

ORDER:

This is a Criminal Petition filed under Section 482 Cr.P.C. by the petitioners/A1 to A3 seeking to quash the proceedings initiated against them in C.C. No.211 of 2015 on the file of learned IV Additional Judicial Magistrate of First Class, Tirupati, Andhra Pradesh.

2. The petitioners are A1 to A3 in C.C.No.211 of 2015. The first respondent is the State and the second respondent is the *de facto* complainant. Based on the private complaint filed by the second respondent-*de facto* complainant before the learned Magistrate for the offence punishable under Sections 120B and 420 read with 34 IPC against four accused viz., petitioners herein/A1 to A3 and one V.S.Venkatraman, the learned Magistrate referred the same to police concerned for investigation, to which the Police Station, Alipiri (first respondent, represented by its Public Prosecutor) registered Crime No.325 of 2014 for the said offences supra. The private complaint was filed on 27.10.2014 and the learned magistrate referred for police investigation by order dated 29.10.2014 saying the Court feels that the case requires investigation by police. Thereafter, the crime was registered on 05.11.2014.

3. The factual matrix of the private complaint in nut shell was the complainant is a resident of Tirupati and was doing real estate business and in August 2012, A1 to A4 approached the complainant in Dalmia Resorts, Tirupati, to sell the Dalmia Resorts International Private Limited (for short, 'the DRIPL') by make believing the complainant of their right over the property by showing registered documents, and having believed their version he accepted to purchase and A3, represented as Executive Director, to deal with the property and it is for 3388 ankanams @ Rs.87,000/- per ankanam, fixed to Rs.29,47,56,000/- and the complainant paid Rs.1.00 crore cash on 03.08.2012 at Tirupati in the presence of LWs2 to 4. On 27.08.2012, the complainant has transferred cash of Rs.25.00 lakhs to the account of DRIPL through RTGS vide reference No.TNR000009269531 through Bank, and on 30.08.2012 again transferred Rs.25.00 lakhs to the account of DRIPL by RTGS vide reference No.TNR000009328370, and on 30.08.2012 paid another sum of Rs.30.00 lakhs through RTGS, and on the same day another cash transfer of Rs.20.00 lakhs through cheque bearing No.048251 of Axis Bank, and on 31.08.2012 paid Rs.25.00 lakhs through cheque bearing No.048252, and on same day again paid Rs.25.00 lakhs through cheque bearing No.048253 of Axis Bank, and the agreement entered was on 30.08.2012 when the accused received two post-dated cheques for Rs.25.00 lakhs each dated 31.08.2012 bearing Nos.048254 and 048255 and those were encashed and the complainant has to pay the balance amount of Rs.2.00 Crores before 30.09.2012 and another Rs.3.00 Crores before 30.10.2012 and there from sale deed to execute by 30.11.2012. Later the complainant and his friend Parthasarathi approached A3 in Delhi expressing readiness by asking to come over to Tirupati and register the property, however, A3 reply of A1 is the Chair person and she did not agree to register the property, and there from the complainant and the said Parthasarathi approached A1 within time before expiry of the conditions in the agreement, however, A1 refused to register the same giving unnecessary reasons many times. The complainant sent mails requesting to register the property, however, A1 is avoiding, and the complainant requested A3 to register or return the amount or extend the time of agreement, but the accused persons refused. It is further averred that the complainant came to know of DRIPL facing many legal problems and the accused are in the nature of cheating many persons in various places and A2 was arrested in Maharashtra in similar case and the intention of accused in approaching the complainant is to cheat by entering the agreement for Rs.3.00 Crores, and A3 is even Additional Director executed the agreement as if Executive Director to receive money from the complainant with intent to cheat and the complainant has given police report to Alipiri Police Station and they did not take any action, thereby the complainant saying cause of action at Tirupati arisen from the agreement entered therein. After registration of the crime, the police having investigated filed the charge sheet against A1 to A4 for the offences punishable under Sections 420 and 120B read with 34 IPC by showing the list of witnesses (7 in number) including the complainant-LW1, Parthasarathi-LW2, Siddala Ravi Babu-LW3 and Kakarla Roopesh-LW4 to corroborate the version of LW2, and LW5, who is the Assistant Manager of Axis Bank, to speak about the bank statement of the complainant of the account No.910010000368668 for the period from 01.08.2012 to 31.12.2012, and LW6, who registered the crime, and LW7, who further investigated the case.

4. The accusation in the charge sheet is as per the sale agreement conditions, the complainant paid amounts and has to pay Rs.2.00 Crores balance by 30.09.2012 and another Rs.3.00 Crores by 30.10.2012 and the accused persons have to register the sale deeds before 30.11.2012, and even the complainant and his friend Parthasarathi-LW2 approached, with balance amounts, the A3 at Delhi to come over to Tirupati and register the sale deed, the accused persons with a *malafide* intention colluded together in saying A4 induced the complainant to purchase the building of DRIPL, Tirupati, and that they hatched a plan in inducing the complainant to purchase the property and thereby cheated. The Investigating Officer sent notices to the accused under Section 91(1) Cr.P.C. on 30.12.2014 at New Delhi to appear at Alipiri with relevant documents in their favour and they failed to appear to prove their genuineness and that on perusal of the bank statement of the complainant, it shows total of Rs.2.00 Crores debited from the account of the complainant to DRIPL vide cheque Nos.48246 to 48249, 48251, 48252 and 48253. Impugning the said cognizance taken by the magistrate under Section 190 Cr.P.C. from the final report of the police under Section 173 Cr.P.C. for the offences supra, the present quash proceedings are filed by A1 to A3 as the petitioners herein.

5. The contentions in the grounds of the petition seeking to quash the proceedings are that it is purely a civil dispute and the criminal proceedings are nothing but abuse of process by influencing police and misusing the position and no criminal offence is made out *prima facie* much less within the jurisdiction of the Court or Alipiri police for the fact that the DRIPL, the company engaged in the business of resorts, owns the land admeasuring Ac.2.92 cents in Survey No.696/1A, Plot Nos.12 and 13 of layout in survey No.494/1 admeasuring about 8 cents adjoining the land with construction thereon at Chandragiri Taluk of Tirupati village, Tirupati Urban Mandal, Tirupati Sub-District, that on 02.08.2012, the company resolved that the above properties were to be sold since offered to purchase by the second respondent-complainant and the company authorised the third petitioner as Director of the company to negotiate and settle and to sign on behalf of the company the requisite agreement of sale, sale deed and all other necessary documents; the Board resolution dated 02.08.2012 is filed as part of the material papers to this petition [Annexure P7]. It is averred that the agreement of sale dated 30.08.2012 was entered accordingly for a total sale consideration of Rs.29,47,56,000/- as admitted in the very complaint by the *de facto* complainant and also recorded all the payments made by the second respondent upto Rs.3.00 Crores, which is earnest money, the agreement is filed as Annexure-P4 of the enclosures to the petition. It is also as admitted by the complainant Rs.2.00 Crores was to be paid by 30.09.2012, Rs.3.00 Crores by 30.10.2012 and the remaining sale consideration by 30.11.2012 and obtain sale deed and time was the essence of the contract. Clause 7 of the agreement provides that if the purchaser fails to pay the entire sale consideration by 30.11.2012, the earnest money and further payments are liable to be forfeited and the vendor got right to take further action including to cancel the deed at its option or to enforce the sale agreement for specific performance.

6. The agreement and the clauses, in fact, not in dispute from the complainant even so also the payments made. A perusal of the agreement *per se* shows nothing to say there is any element of cheating at the time of entering to attract the offence under Section 420 IPC with any dishonest intention from the inception as the accused even not disputing much less by complainant the agreement and the terms and also the right of accused to cancel the agreement if entire consideration that was not being paid by complainant before 30.11.2012 to obtain sale deed. There is nothing to say any criminal conspiracy to cheat for no any element of cheating.

7. In fact, it is important to see the correspondence between the parties as to there is any element of cheating on the part of the accused and whether the complainant is so innocent as pictured by him in his complaint referred to police in their filing the final report, enen not named LWs3 and 4 in their saying also as witnesses. What LW5 stated is the complainant is account holder with the account referred supra and there are from that account to Dalmia Resorts, RTGS transactions as shown in the bank statement from 01.08.2012 to 31.12.2012. The sale agreement terms dated 30.08.2012 are not in dispute. Clause 7 speaks if the purchaser fails to pay the total sale amount within the time aforesaid, the earnest money and all further payments shall be forfeited to the vendor and the vendor shall have the right to take appropriate course of action including cancellation of the deal and/or the vendor may at his option enforce specific performance of the agreement to make the vendee liable to pay the costs and expenses of proceedings for specific performance. That clause is important in addition to clause 2 of Rs.2.00 Crores payable by 30.09.2012, Rs.3.00 Crores payable by 30.10.2012, and remaining balance to obtain sale deed by 30.11.2012 in addition to eight payments in all of Rs.3.00 Crores out of the total consideration of Rs.29,47,56,000/-. Importantly, the sale agreement shows the non-judicial stamp purchased is Government of National Capital

Territory of Delhi, which is an electronic stamp bearing certificate No.IN-DL17043444299892K and certificate dated was 29.08.2012 7.25 PM, this account refers to Delhi and unique document reference is also of Delhi with code and purchased by DRIPL and description of document is Article 5 General Agreement and the stamp is for Rs.100/-. The agreement is undisputedly dated 30.08.2012. It is not even the stamp purchased by the *de facto* complainant at Tirupati much less within Alipiri police station jurisdiction. There is nothing even to say the agreement settled or entered at Tirupati or Alipiri police station jurisdiction. It indicates as contended by the petitioners the agreement entered at Delhi only. Even as second party to the agreement, the complainant, having signed with date, did not mention as at Tirupati. There is nothing even to show the so-called cheques are RTGS transfers covered by the said amount were encashed by presenting at Tirupati from the Axis Bank, Tirupati Branch. So far as A3 allegedly cheated about his competency to sign the agreement is concerned, the minutes of meeting of the Board of Directors of Dalmia Resorts is clear of he is authorized being Director of the company to negotiate, settle the terms and conditions for sale of the company property, and sign and execute agreement, sale deed and other necessary documents. Thus, there is nothing to show any element of cheating on his part in his executing the agreement on behalf of Dalmia Resorts. Thus, there is nothing to show the contract was entered at Tirupati. Leave it as it is, the subsequent events after the time stipulation under the contract for sale, which are relevant for the case on hand, are as under:

8. On 29.11.2012, which is before the due date for whole payment by 30.11.2012 pursuant to clause 7 of the agreement referred supra that committed default by the complainant, A3 on behalf of Dalmia Resorts sent e-mail from Delhi to the complainant that as per the terms of the agreement dated 30.08.2012 (referred supra) only earnest money detailed in clause 1 paid till date and as per clause 2 the payments stipulated of by 30.09.2012 and 30.10.2012 and remaining fully by 30.11.2012 and surprisingly no positive response is being shown by him (complainant) to comply with the terms of the agreement, thereby requested to comply the same and arrange entire payment by 30.11.2012, so that necessary sale documents may be executed, failing which clause 7 of the agreement shall be attracted. This telegram itself indicates the Dalmia Resorts entity, represented by A3 as its authorized signatory as per the minutes of the meeting vide resolution supra, addressed the complainant adhere to the payment stipulations, failing which clause 7 to be attracted all means to forfeit the advance paid or to proceed further according to law within their option. Had there been any element of cheating much less outcome of so-called conspiracy or privy, the question of their giving telegram for the complainant's default does not arise. That itself belies the accusation made by the complainant. However, on the even date there is a registered post letter sent by speed post and the postal receipts also filed in this regard.

9. It is important to note that the complainant on 30.11.2012 addressed a letter to Chair person of Dalmia International Resorts Private Limited stating that due to unavoidable circumstances he could not obtain registered sale deed even the vendor is extending their co-operation for purchase of the property, and there are several reasons of personal difficulties he expressed and that he sought for time till 31.12.2012 and if he fails to pay the amount and obtain registered sale deed, he would forego whatever advance he paid and whatever clauses applied in the agreement. This itself cuts the very cases of the complainant as he admitted his latches and fault in non-performing his part of the contract and sought for time for one month till 31.12.2012 by agreeing that he could not pay the amount as agreed to obtain the sale deed. The vendor again sent another e-mail dated 10.12.2012 saying that by considering his e-mail dated 30.11.2012 and the response supra having believed the assurance therein they extend the time to pay the amount and to obtain sale deed upto 22.12.2012 as last and final date, but that can under no circumstances be extended, hence, to make necessary arrangements to pay by them as per clause 3 of the agreement, failing which the payments made by him so far stand forfeited as also agreed by him in his email dated 30.11.2012 in point No.9 besides the agreement terms. They also sent registered letter of even date in this regard. The email sent by the complainant and the mediator Parthasarathi dated 20.12.2012 and 19.12.2012 to A1 and A3 respectively is to send/depute their authorised person to come to Tirupati for measuring the land and though the time they fixed is expiring by 22.12.2012, the complainant requests upto 30.12.2012 and plan the trip to Tirupati on 21.12.2012 and regarding payment they will discuss as the amount is high and they are anxious to complete the work. This itself is clear of the complainant even not adhere to the time extended by the vendors upto 22.12.2012. The response of Dalmia Resorts through A3 by email dated 22.12.2012 is that they received the email supra seeking extension upto 31.12.2012, that is thereby accorded as a last and final date with no any further extension, failing which as per clause 7 of the agreement reproduced and point No.9 of his email dated 30.11.2012 the complainant/vendee has to forego whatever advance he paid.

Another email dated 30.12.2012 of the complainant to A1 by marking copy to Parthasarathi that they went to Delhi and explained the information regarding registration before 31.01.2013 and in the discussion the complainant stated at Delhi that the complainant needs time till 15.02.2013, however, instead of 15.02.2013 if the time given upto 30.01.2013 is enough as the State Financial Corporation sanctioned term loan and that has to be credited to the complainant's account and some paper work in this regard is pending, meanwhile to be completed, and the response of Dalmia of even date within no time lapse for the email sent at 12.04 noon, he sent email at 7.55 PM again saying even on behalf of the Dalmia Resorts they deputed their authorized person for measuring the land at Tirupati on 29.08.2012 because of the World Telugu Conference holding on 27th to 29th of December 2012 the revenue people are busy and the complainant could not secure the Surveyor and thereby the complainant visited Delhi on 26.12.2012 and met the Chair person of Dalmia Resorts saying 15.12.2012 to 15.01.2013 are not auspicious days, so that to get the sale deed to execute and register in the fourth week of January 2013 after completion of formalities, as the A.P State Financial Corporation, Tirupati Branch, sanctioned loan to the complainant.
The reply of Dalmia Resorts on 31.12.2012 at 12.45 noon to the complainant is as per clause 7 of the agreement reproduced by pointing out his conduct not good in not adhering to the terms even the vendor is always ready and willing to perform their part and even not adhering to the complainant's email dated 30.11.2012 point No.9 to forfeit the advance. The Dalmia Resorts also sent a registered letter by speed post of even date to the complainant saying already they extended time upto 31.12.2012 from 22.12.2012 at his request and from his admission in the letter

dated 30.11.2012 point No.9 authorising the vendor to forfeit the advance and the conduct is not good on his part. They sent another email dated 04.01.2013 to the complainant referring to clause 7 of the agreement and his letter and email dated 30.11.2012 point No. 9 by making it clear that the deal qua the subject property stands cancelled and the amount already paid by the complainant as earnest money stands forfeited and thereby the vendor is at liberty to sell the subject property to any other *bona fide* purchaser. On the even date 04.01.2013, Dalmia Resorts also sent, to that effect, a registered letter saying the complainant failed to adhere to his promises even they extended the time till 31.12.2012.

10. On 12.05.2014, that is more than one year four months after the email and registered post communication of the vendor dated 04.01.2013 to the complainant of canceling the agreement and forfeiting the advance, the complainant sent email stating that to the A1 of Dalmia Resorts for the support extended by the vendors, while thanking, mentioned that delay happened on his part i.e., the complainant due to financial institutions, legal and dispersing process and he is expressing regret that now the financial institutions sanctioned loan amount and as he paid Rs.3,30,00,000/- as advance, the balance amount he will transfer and he is also ready for any price revision as per market rate for open discussions, hence sending the email; and again on 15.05.2014, he sent another email saying he is a small person and support him on humanitarian grounds; and again on 31.05.2014, he sent a registered letter saying delay happened from his side for making payment since the amount is huge and the financial institutions taken lead time to release the fund and now amount is ready and he will make payment if the vendor specify the disbursement saying total payable amount of Rs.28,60,56,000/-, of which advance paid is Rs.3.30 Crores, and the balance to be paid is Rs.25,30,56,000/-. All these categorically show it is the complainant if at all who committed default without even funds and entered the agreement and not adhered to the terms and has given out to forfeit the advance, if he could not get ready within the stipulated time and not adhered to it, even again sought for time and the vendors even extended till 31.12.2012, initially fixed till 22.12.2012, he failed to comply and sought for further time, that was not considered and even later having the contract for sale canceled by forfeiting the advance and intimated on 04.01.2013 with no response to it to make the contract alive. It is only one year four months later he addressed two letters in seeking to enhance price and by then get ready with funds and as the contract was already cancelled by the vendors as per the terms, particularly, clause 7 of the agreement there is no contract to enforce and it is purely a civil dispute. The complainant, by suppressing all these facts by abusing the process, filed the complaint. Therefore, the complaint proceedings that was filed before the learned magistrate by the complainant, in turn referring to police for investigation under Section 156(3) Cr.P.C. is outcome of suppression of the material facts and the police also without proper investigation simply relied on his complaint version and filed the charge sheet by converting the civil dispute into a criminal prosecution, which is nothing but abuse of process of law as laid down by the Apex Court in **Rajib Ranjan and others v. R.Vijay Kumar**[1] and by a Division Bench of this Court in **Inder Raj Agarwal v. Union of India**[2] particularly at paragraph Nos.8 to 12 and 29 to 32 referring to several expressions of the Apex Court on the duty of a person approaching Court of law with clean hands by disclosure of all material facts without any suppression which otherwise tantamounts to abuse of process that is to be strongly curbed in order to sustain the sanctity and solemnity of proceedings in law Courts, as parties cannot be allowed to make false or knowingly inaccurate misrepresentation in their statements or to conceal material facts with a design to gain some advantage.

11. Though it is one of the submissions by the learned counsel for the complainant as respondent to the quash proceedings herein referring to the expression of the two Judge Bench of the Apex Court in **Ganga Dhar Kalita v. State of Assam & others** [Arising out of S.L.P. (Crl.) No.4425 of 2014], the facts therein are that the appellant Ganga Dhar Kalita fraudulently got executed the Power of Attorney dated 11.04.2006 by forging signatures of Kaustav K.Kalita, Rishi Raj Borgohain and Yuva Raj Borgohain. The High Court did not choose to quash proceedings sought by the accused for the offences punishable under Sections 419, 420, 468 and 471 read with Section 34 IPC, and the Supreme Court did not choose to interfere by sitting against the order of the High Court. In the instant case, it is not even the case of the complainant that there is any forgery of a document and using as genuine for the purpose of cheating. He admits execution of the agreement and payment of the amount as advance and the clause in the agreement to forfeit the advance by making time essence of the contract for non-fulfillment and also in his correspondence admits his default and there is no fault of the vendors, who were arrayed as accused, much less the mediator, who introduced i.e., A4 and there is no basis for the complaint to maintain the criminal prosecution against the accused for their no fault and for no cause of action even at Tirupathi area and the agreement already cancelled more than 1½ years before the complaint by forfeiture of the advance and by intimation to complaint and of his silence there from for more than 16 months and the filing of the private complaint and asked to refer to police and from registering of crime and filing of charge sheet without proper investigation and even the proceedings are outcome of suppression of material facts and fault of complaint which is nothing but abuse of process in the above referred factual and legal scenario, apart from the dispute is purely a civil one with no any criminal element.

12. In fact, the Apex Court in **Rashmi Jain v. State of Uttar Pradesh and another**[3] held that when the dispute is purely civil in nature attributions by complainant by inserting something with malicious intent to convert a purely civil dispute into criminal offence cannot survive and liable to be quashed and the High Court committed a grave error in not quashing saying there are disputed questions of fact or in ignoring the material saying the defence of accused cannot be considered at that stage, and alternatively the accused got right to file application if no grounds to frame for discharge. The Apex Court held by referring to **State of Haryana and others v. Bhajan Lal and others**[4] guidelines of fit case to quash the proceedings. The same is also the position of law of converting a purely civil dispute into a criminal case tantamounts to abuse of process and liable to be quashed as laid down in **G.Sagar Suri and another v. State of U.P. and others**[5], **M/s.Suryalakshmi Cotton Mills Ltd. vs. M/s. Rajvir Industries Ltd. and others**[6], **Uma Shankar Gopalika v. State**

of Bihar and another[7]**, Indian Oil Corporation v. NEPC India Limited and others**[8], **Inder Mohan Goswami & another v. State of Uttranchal & others**[9], **Chandran Ratnaswami v. K.C.Palanisamy and others**[10], **Devendra and others v. State of Uttar Pradesh and another**[11]**, Rukmini Narvekar v. Vijaya Satardekar and others**[12] that the High Court has to be free to consider the material placed by accused in the quash petition if it discloses to reject the accusations of the complaint, **Rajiv Thapar and others v. Madan Lal Kapoor**[13] (the 4 steps particularly laid down at paragraph No.30 (1 to 5), **Binod Kumar and others v. State of Bihar and another**[14] and **Prasant Bharti v. State of NCT of Delhi**[15] besides the latest expression in **Rajib Ranjan** (Supra 1). Having regard to the above, the proceedings in C.C.No.211 of 2015 are liable to be quashed.

13. Accordingly, the Criminal Petition is allowed quashing the proceedings of C.C. No.211 of 2015 on the file of the learned IV Additional Judicial Magistrate of First Class, Tirupati, Andhra Pradesh, that was taken cognizance from the police final report by the learned magistrate against the petitioners/A1 to A3 and also the A4, who is not even a party, for nothing survives even against him because of the proceedings quashed against the petitioners/A1 to A3.

14. Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 01.09.2015
MVA

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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