

HON'BLE SMT. JUSTICE ANIS
CRIMINAL PETITION No. 7494 OF 2012

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ORDER:

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This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioners/A.1 to A.3 requesting to quash the proceedings in Crime No.123 of 2012 on the file of I Town Police Station, Srikakulam.

2. The aforesaid petition is filed on the ground that the issuance of FIR on the basis of report of respondents 2 and 3 is an abuse of process of law and is without jurisdiction; that the SHO, II Town Police Station, Srikakulam closed the earlier report in Receipt No.175 of 2012 of the respondents 2 and 3 as it was held to be a matter of civil nature; that in the earlier report of the respondents, it does not make out any case of cheating against the petitioners, and therefore, the registration of FIR is an abuse of process of law; that the SHO, I Town P.S., Srikakulam ought to have seen that mere objection of unknown persons over the plots sold by the petitioner No.1 to the respondents 2 and 3 does not make the plots a subject of dispute and the sale does not amount to cheating; that the report given by the respondents 2 and 3 is vague, cryptic and lacking any particulars as to fraudulent intention of the petitioners; that the respondents 2 and 3 suppressed the earlier report given to the SHO, II Town P.S., Srikakulam and its closure on the ground of civil nature; that the report does not disclose the basic ingredients of Section 420 IPC; that the SHO, I Town P.S. ought to have seen that the land was sold and registered in the year 2011 and there was no objection to the possession and enjoyment of the respondents 2 and 3 from anyone; that the present report is filed only to harass the petitioner No.1 to pay huge sum of Rs.35 lakhs and it is their modus operandi to squeeze money from innocent vendor like petitioner No.1; that no

agreement is filed by the respondents 2 and 3 in proof of payment of Rs.35,60,000/- which every prudent purchaser takes; that if really any person objected the enjoyment of the respondents 2 and 3 over the plots, they would have stated the name and other particulars of the persons objecting in the report; that that witnesses shown in the report are not at all witnesses in the Sale deed and not known to the petitioner No.1, and finally prayed the Court to quash the proceedings in Crime No.123 of 2012 on the file of I Town Police Station, Srikakulam.

3. The learned counsel for the petitioners argued that originally the land belongs to the petitioner No.1 and he was sold it for Rs.4,90,000/-; that there is no agreement filed by the respondents 2 and 3 that they purchased the property for about Rs.35 lakhs; that the report is silent as to who are the persons interfered with the peaceful possession of the respondents 2 and 3; that the earlier report filed by the respondents 2 and 3 before the SHO, II Town P.S., Srikakulam was closed as it was held to be a matter of civil nature and on the same allegations, the respondents 2 and 3 filed the present impugned report; that the respondents 2 and 3, if prevented by any persons into their lawful possession over the property purchased from the petitioner No.1, they have a remedy to file a civil suit and obtain injunction; that the respondents 2 and 3 never stated that the petitioner No.1 is not the owner of the property and if someone objected and interfered with the possession of the respondents 2 and 3 over the property, it does not attract the provisions of Indian Penal Code, and relied upon a case-law reported in *Rishipal Singh Vs. State of U.P. and another*^[1], wherein the Hon'ble Supreme Court held at Para 12 as follows:

“This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts Under Section 482 Cr.P.C. Code of Criminal Procedure. In *State of Haryana v. Bhajan Lal* : 1992 Supp(1) SCC 335, this

Court has listed the categories of cases when the power Under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* : 1996 (5) SCC 592; (2) *Rajesh Bajaj v. State NCT of Delhi* : 1999 (3) SCC 259 and; (3) *Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque and Anr.* : (2005) 1 SCC 122. This Court in *Zandu Pharmaceuticals Ltd.*, observed that:

“The power Under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power Under Section 482 of the Code must be exercised and proceedings must be quashed.”

Also see *Om Prakash and Ors. v. State of Jharkhand* : 2012 (12) SCC 72.

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power Under Section 482 Code of Criminal Procedure. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether *prima facie* discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.”

The learned counsel also relied on a case-law reported in *Paramjeet Batra Vs. State of Uttarakhand and others*^[2], the Hon'ble Supreme Court held at Para 12 as follows:

“While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil

transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

The learned counsel further argued that continuation of the proceedings in Crime No.123 of 2012 on the file of I Town Police Station, Srikakulam is an abuse of process of law and is without any jurisdiction and prayed the Court to quash the same.

4. On the other hand, the learned Public Prosecutor argued that the earlier report filed by the respondents 2 and 3 before the II Town Police Station, Srikakulam has not been registered and in the said case, the police obtained the opinion of the Public Prosecutor, who gave his opinion on 15.05.2012 stating that no criminal action was to be initiated as the complainant therein can go to the Civil Court for permanent injunction against the persons who obstructed them, and basing on the opinion of the Public Prosecutor, the said report was closed; that now the respondents 2 and 3 filed the complaint before the I Town Police Station and the same was registered as Crime No.123 of 2012 and admitted that MRO gave a report in this case on 19.07.2013 about the ownership of the land in dispute; that unless the investigation is completed, it cannot be said that whether the proceedings pending amount to abuse of process of law and is without jurisdiction; that some of the witnesses in this case were examined, and finally, prayed the Court to dismiss the petition.

5. Notice to the respondents 2 and 3 was served, but no representation was made.

6. Now, the point for determination is –

Whether the petitioners/A.1 to A.3 are entitled to quash the proceedings in Crime No.123 of 2012 on the file of I Town Police Station, Srikakulam?

7. **Point:**

There is no dispute that the respondents 2 and 3 purchased the land admeasuring 500 Sq. yards from the petitioner No.1 under a registered Sale deed dated 16.04.2011. For purchasing the said land, petitioners 2 and 3 along with the wife of the second petitioner, approached the respondents 2 and 3 and informed them about the availability of land pertaining to the petitioner No.1. Basing on their representation, respondents 2 and 3 purchased the said land. The respondents 2 and 3 filed the complaint against the petitioners in Crime No.123 of 2012 on 28.09.2012 stating that the petitioners 2 and 3 along with the wife of second petitioner cheated them by taking Rs.35,50,000/-.

8. The learned counsel for the petitioners argued that the respondents 2 and 3 already filed a complaint before the II Town Police Station, Srikakulam on the same grounds and the subject-matter was referred to the Public Prosecutor for opinion, wherein he gave a opinion stating that the case of the complainant therein was in civil nature and no criminal action was to be initiated, and thereafter, the respondents 2 and 3 filed the present complaint. On the other hand, the learned Public Prosecutor contended that as per the MRO's report, the first petitioner along with another lady by name Indirabhai are the owners of the property situated in T.S.No.825 and they are selling the land indiscriminately, and thereby, the fact that whether the petitioners 1 to 3 cheated the respondents 2 and 3 will be known only when the investigation is completed.

9. Admittedly, the respondents 2 and 3 purchased the land admeasuring 500 Sq. yards from the petitioner No.1 who got share in

T.S.No.825 along with some other persons. As per the registered Sale deed, sale consideration was paid by the respondents 2 and 3 to the petitioner No.1. Whether the petitioners 2 and 3 induced and encouraged the respondents 2 and 3 to purchase the land from the petitioner No.1 has got to be investigated by the Investigating Officer. Further, the registration of FIR against the petitioners will not amount to abuse of process of law at this stage. The case-laws relied on by the learned counsel for the petitioners have no bearing on the facts and circumstances of the present case. Further, there is no dispute that the complaint filed by the respondents 2 and 3 is disclosing the civil transaction, but the contents may also have a criminal texture and it has to be seen in the trial Court that whether such nature of dispute is essentially of a civil nature is given a cloak of criminal offence. Therefore, the petitioners have not made out any case to quash the proceedings in Crime No.123 of 2012 on the file of the I Town Police Station, Srikakulam at this stage.

10. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 11.03.2015

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[\[1\]](#) 2014(2) ALD (CrI.) 1000 (SC)

[\[2\]](#) (2013)11 S.C.C. 673