

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3030 of 2013

ORDER:

The petitioners/A.1 to A.5 seek to quash the proceedings in FIR No.18 of 2013 of Kalidindi PS, Krishna District which was registered basing on the private complaint filed by the 2nd respondent before Judicial First Class Magistrate, Kaikaluru and forwarded to Police.

2a) The FIR allegations in brief are that A1 is a Construction Firm; A2 is its Managing Partner; A3 is its Marketing Agent; A4 and A5 are local agents dealing with to real estate business. On 10.11.2007 the 1st accused approached the complainant and informed that they purchased lands from one Madava Rao and started house sites venture in Buddavaram village by the side of Gannavaram Airport in the name and style *Royal Bhavan City* and the plots were approved by VUDA and showed him lay out plan and induced him to purchase plots. Believing him, the complainant and his wife—Sridevi joined in the venture as members to purchase four plots bearing Nos.190, 191, 192 and 193 by paying membership fee of Rs.200/- and Rs.1 lakh towards first instalment. From time to time they paid the total sale consideration of Rs.15,60,000/- including registration charges. When the complainant requested to register the

plots, the accused told him to attend Sub-Registrar office on 02.01.2010 with all payment receipts for effecting registration. Accordingly, the complainant and his wife went to Registrar office on 02.01.2010 but found accused absent and thereafter again the complainant made request to the accused to register the plots but they did not do so. Hence suspecting their attitude, the complainant went to Buddavaram village and made enquiries with regard to genuineness of the venture and came to know that there was no lay out of plots as represented by the accused and VUDA did not approve the layout. The complainant was informed by the villagers that most of the lands in that vicinity were under acquisition for Gannavaram Airport and the remaining land also did not belong to the accused. Thus, the complainant found he was cheated by the accused to a tune of Rs.15,60,000/-.

Hence the complaint.

b) Aggrieved by the registration of FIR, the accused filed the instant quash petition. Their version is that they never cheated the complainant and his wife as alleged and on the other hand, the 2nd respondent/complainant suppressed the material facts relating to the transaction between the parties and filed complaint. According to them, though the complainant took membership with them to purchase plot Nos.190, 191, 912 and 193, he failed to

pay full amount but only paid Rs.10,90,000/- and therefore he entered into an agreement dated 28.10.2008 with the accused styled as "*Oppudala Patram*" whereunder he agreed to receive another plot bearing No.101 in an extent of 389 sq. yds. which was equivalent to the amount paid by him. Pursuant to the said agreement dated 28.10.2008 the accused have executed sale deed dated 30.10.2008 in favour of complainant. However, in the said sale deed instead of mentioning plot No.101 and its boundaries, plot No.190 and its boundaries were got mentioned by the representative of the complainant. Therefore, the 1st accused issued several notices including the notice dated 23.08.2012 to the complainant informing about the wrong mentioning of plot number and boundaries in the sale deed dated 30.10.2008 and requested him to cooperate with the accused to rectify the mistake in the sale deed. However, the complainant neither gave reply to their notice nor cooperated with them for effecting rectification. When the matter thus pending, the complainant gave a false complaint as if the accused have cheated him by not registering the four plots after allegedly receiving the entire sale consideration of Rs.15,60,000/-. Hence, the complaint is not maintainable.

c) The 2nd respondent/complainant has filed his counter and additional counter denying his execution of

agreement dated 28.10.2008 and agreeing to obtain sale deed in respect of plot No.101 in an extent of 389 sq. yds. in lieu of plot Nos.190 to 193. The complainant mentioned that he was not informed about the alleged sale deed dated 30.10.2008 and he has not received any registered documents with regard to said property.

3) Heard Sri M.L.Ali, learned counsel for petitioners and Sri T.V.V.Koteswara Rao, learned counsel for R2.

4) Learned counsel for petitioners would vehemently contend that the complaint is liable to be dismissed for suppression of material facts as complainant did not make any whisper about his entering into agreement dated 28.10.2008 and obtaining sale deed dated 30.10.2008. He would further contend that the entire case relates to civil transaction and therefore, continuation of investigation would amount to abuse of process of law. He thus prayed to quash the FIR.

5) Per contra, learned counsel for 2nd respondent/complainant argued that he never executed the agreement styled as *Oppudala Patram*. He did not agree to receive house site in respect of plot No.101 and sale deed, if any, executed by the accused was not within his knowledge or consent and since the accused induced him to purchase the plots and obtained the entire sale consideration of Rs.15,60,000/- and later cheated him,

the criminal case is very much maintainable against them and hence petition is liable to be dismissed.

6) On perusal of the record, this Court is of the considered view that the dispute is purely civil in nature. The complainant's grievance is that the petitioners/accused received sale amount of Rs.15,60,000/- but failed to register plot Nos.190 to 193 as promised by them earlier and on verification he found that the plots were not laid and approved by the VUDA and on the other hand the land in question was in fact acquired for Gannavaram Airport. On these allegations, no doubt complainant says he was cheated. On the other hand, the contention of petitioners/accused is that they never cheated him and the complainant failed to pay the entire sale amount relating to four plots and therefore, he entered into an agreement dated 28.10.2008 agreeing to obtain a sale deed in respect of a different plot bearing No.101 in an extent of 389 sq.yds. equivalent to the amount paid earlier and pursuant to the said agreement, sale deed dated 30.10.2008 was executed. In the said sale deed the representative of the complainant wrongly got mentioned plot No.190 and its boundaries in stead of plot No.101 and its boundaries and therefore, the accused issued several notices including notice dated 23.08.2012 requesting the complainant to cooperate with them to effect the rectification deed but the complainant

did not turn up. Thus the accused claimed that they never cheated the complainant. Of course, the complainant in his additional counter denied having entered agreement dated 28.10.2008. He also pleaded ignorance of execution of sale deed dated 30.10.2008 in his favour.

7) Thus, a close scrutiny of allegations and counter allegations would give an understanding that the litigation is a civil oriented one and therefore, the parties have to vindicate their stand before the concerned civil Court. The police investigation, in my considered view, is not a panacea to decide the rights of the parties in respect of contract they entered into. Therefore, I am of the firm view that continuation of criminal proceedings would amount to abuse of process of the Court.

8) In the result, this Criminal Petition is allowed and proceedings in FIR No.18 of 2013 on the file of Kalidindi P.S, Krishna District registered against the petitioners/A.1 to A5 are hereby quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 30.08.2016
Murthy