THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.8010 of 2010

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner in C.C.No.35 of 2009 on the file of the Court of the II Additional Judicial Magistrate of First Class, Kothagudem, Khammam District.

2 The contention of the learned counsel for the petitioner is three fold, viz., **1)** The alleged agreement of sale dated 15.02.1993 is not legally enforceable as both parties are non-Tribals, **2)** Initiation of criminal proceedings basing on the unenforceable agreement of sale is bad in law, and **3)** the allegations made in the complaint do not constitute any offence, much less, the offence punishable under section 420 IPC against the petitioner.

3 In spite of several adjournments being given, no arguments were advanced on behalf of the second respondent.

4 The learned Additional Public Prosecutor submitted that the allegations made in the complaint are, prima facie, sufficient to proceed further against the petitioner and hence the petition is liable to be dismissed.

5 The admitted facts leading to filing of the present petition, briefly, are that basing on the complaint lodged by the second respondent, the Station House Officer, Kothagudem I Town Police Station registered a case in Cr.No.105 of 2006 under Section 420 IPC. After completion of investigation, the investigating officer filed charge sheet before the learned II Additional Judicial Magistrate of First Class, Kothagudem. The learned Magistrate, after satisfying himself with the material placed before him, had taken cognizance of offence against the petitioner under Section 420 IPC and issued summons. Hence the petitioner filed the present Criminal Petition.

6 It is not in dispute that the property covered under the agreement of sale dated 15.02.1993 is an extent of 600 sq. yards situated in Sy.No.55/1-A and 44/5 of Chenchupalli village, Kothagudem Mandal, Khammam District. It is equally admitted fact that the said property is situated in agency area and that the petitioner as well as the second respondent are non-Tribals.

7 The predominant contention of the learned counsel for the petitioner

is that registration of criminal case against the petitioner basing on the agreement of sale is *non-est* in the eye of law.

8 To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the provisions of the A.P. Scheduled Areas Land Transfer Regulation, 1959. A perusal of Section 3 (1) (a) of the Regulations clearly demonstrates that even a Scheduled Tribe person is not entitled to transfer his property in an agency area to a non-Tribal. A perusal of Section 3-B of the Regulations postulates that the registering authority is not entitled to register an instrument of transfer unless the transferee gives a declaration that he is Scheduled Tribe. Section 6-A (1) (a) of the Regulations contemplates penalty in case of transfer of property in violation of the provisions of the Act.

9 The learned counsel for the petitioner has drawn my attention to the ratio laid down in ***Krishna Ceramics & Refractories, Rajahmundry vs. Sri K.V. Narayana, Rajahmundry***[1]. The principle enunciated in this case is that any contract in violation of the statute is illegal and unenforceable in view of Section 23 of Contract Act.

10 This Court is very much conscious that while exercising jurisdiction under Section 482 Cr.P.C, this Court is not supposed to express any opinion with regard to the rights of the parties in immoveable property. This is not the proper forum to declare the rights of the parties basing on an agreement of sale. The party who seeks redressal has to approach the appropriate forum either for enforceability or for non-enforceability of the agreement of sale.

11 Even as per the recitals of the agreement of sale dated 15.2.1993, the second respondent paid an amount of Rs.8,000/- towards advance to the petitioner by agreeing to pay the remaining amount of Rs.16,000/- at the time of registration of document. For one reason or the other, the second respondent had not obtained a regular sale deed for all these years. Even as per the recitals of the agreement of sale, the property was not delivered to the second respondent. As per the case of the second respondent, the petitioner executed the agreement of sale on 19.07.2006 in favour of one Smt. Vithanala Lakshmi W/o Prabhakar Rao.

12 Establishment of the following two ingredients is *sine qua non* in order to attract the offence of cheating punishable under Section 420 of IPC.

a) Deceit i.e. dishonest or fraudulent misrepresentation to a person,

b) Inducing of that person thereby to deliver the property.

13 It is not the case of the second respondent that the petitioner is not the absolute owner of the property covered under the agreement of sale dated 15.02.1993. It is not her case that the petitioner made a false representation with an intention to deceive her as on 15.02.1993. I have carefully perused the material placed before this Court in order to ascertain whether or not the basic ingredients of Section 420 of IPC are attracted to the case on hand. The statements of the witnesses do not disclose that the petitioner made false representation to the second respondent with an ulterior motive to cheat her. Even if the uncontroverted statements of the witnesses are taken into consideration, no case is made out against the petitioner for the offence under section 420 of IPC. Mere mentioning of a word in the charge sheet that the petitioner cheated the second respondent by itself is not a valid ground to take cognizance of offence against the petitioner and compel him to face rigour of criminal trial. The complaint is bereft of basic ingredients of Section 420 of IPC.

14 The learned counsel for the petitioner has drawn my attention to the ratio laid down in ***The State of Kerala vs. A. Pareed Pillai***[2] wherein the Hon'ble apex Court held that to hold a person guilty of offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise. The second respondent made an attempt to convert the civil litigation into a criminal one in order to bring pressure on the petitioner. The alleged lis between the parties is purely civil in nature.

15 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that continuation of criminal proceedings against the petitioner would certainly amount to abuse of process of law and this is a fit case to quash the criminal proceedings against the petitioner by exercising the jurisdiction under Section 482 Cr.P.C.

16 In the result, this Criminal Petition is allowed, quashing the proceedings against the petitioner in C.C.No.35 of 2009 on the file of the Court of the II Additional Judicial Magistrate of First Class, Kothagudem, Khammam District. As a sequel, the miscellaneous petitions, pending in this petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date:24th June, 2016

Kvsn

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[1] 2000 (3) ALT 562

[2] AIR 1973 SC 326