THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15689 of 2016

ORDER:

This Criminal Petition under Section 482 Code of Criminal Procedure (for short 'Cr.P.C) is filed to quash the proceedings in C.C.No.274 of 2014 pending on the file of Judicial First Class Magistrate, Avanigadda, Krishna District on the following grounds:

a) There is absolutely no evidence to prove the offence allegedly committed by the petitioner; and

b) There was an agreement of sale between de facto complainant and the petitioner for Rs.4,00,000/- but not for Rs.6,75,000/- as contended by the *de facto* Complainant; and

c) It is purely a civil dispute and the same cannot be converted into criminal.

Based on the above grounds, the proceedings are liable to be quashed.

It is the case of the *de facto* Complainant that she filed a private complaint before Judicial Magistrate of First Class, Avanigadda, Krishna District, against the petitioner alleging that on 16.08.2016 he went to the house of Pw.1/*de facto* Complainant along with Dagani Sangeetha Rao and informed that Bughatha Satyanarayana offered to sell his building along with 200 sq. yards for Rs.31,00,000/- and then the *de facto* Complainant on consultation of her son by name Ramakrishna by phone, agreed to purchase the property for his son's business and the accused acted as mediator for the said sale transaction along with Dagani Sangeetha Rao, Gokapai Rambabu, Mangalagiri Kantharao, Nandiparnula Venkateswara Rao and Dirisam Venkatarao. On 14.09.2012 the petitioner came to the house of *de facto* Complainant along with Dagari Sangeetharao and took an advance amount of Rs.6,75,000/- in the presence of the above persons and in turn he paid

Rs.4 lakhs to Sangeetharao and retained Rs.2,75,000/- with a fraudulent intention that Rs.2,75,000/- was not part of the consideration and misappropriate the same for himself. Thus, he committed an offence punishable under Sections 420, 447, 323 and 506 IPC.

Initially, the Court referred the mater to Police while exercising power under Section *156(3) of Cr.P.C.* and in turn the Police registered the same as a crime and investigated the matter and recorded the statements of the witnesses. After completion of investigation and upon satisfying that the accused/petitioner committed an offence based on the material collecting during investigation filed charge sheet against the accused. The learned Magistrate took the case on file for the offences stated above by an Order dt. 30.06.2014.

The petitioner questioned the proceedings on the first ground that there is no evidence to connect the petitioner. It is settled law that the jurisdiction of this Court is limited under Section 482 Cr.P.C. and the said jurisdiction can be exercised sparingly when the case does not disclose, on its face value, an offence punishable under any penal provisions or charge sheet was filed only as abuse of process of the Court or where there is any bar under any enactment against taking cognizance of the offence by the Magistrate etc., This Court is required to look into the allegations made in the charge sheet, on its face value, and if the Court satisfies that those allegations would constitute an offence, this Court cannot quash the proceedings by exercising inherent power under Section 482 Cr.P.C., as held by the Apex Court reported in ***State of Haryana v. Bhajanlal and others***[1]**, wherein** the Apex Court laid seven guidelines, which are as follows**:**

> (1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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[1] 1992 Supp (1) SCC 335

2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the later judgment reported in **Madhavrao Jiwaji Rao Scindia vs Sambhajirao Chandrojirao Angre**[2] the Apex Court following the guidelines laid down in Bhajanlal's case referred supra, laid down a specific test to be applied while exercising jurisdiction U/s 482 Cr.P.C., and the test to be applied by the court is as to whether the uncontroverted allegations, as made, *prima facie* establish the offence. Therefore, at this stage of deciding an application under Section 482 Cr.P.C., this Court can advert to the evidence collected during investigation. It is also contended that the witnesses i.e., LWs. 2 to 7 shown in the list of witnesses annexed to the charge sheet, were not present at the time of alleged offence, but, it is not a ground at this stage.

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[2] AIR 1988 SC 709

The other contention of the learned counsel for petitioner is that it is a civil dispute and the same cannot be converted into Criminal case for the reason that the *de facto* complainant alleged that she agreed to purchase the plot from Bughatha Satyanarayana-LW.8, who offered to sell the property for Rs.31,00,000/-. No doubt, the *de facto* complainant purchased the property under an agreement of sale, but the accused being a mediator or a real estate agent received Rs.6,75,000/- as advance, but paid Rs.4,00,000/- to the said Satyanarayana Bughatha retaining or withholding Rs.2,75,000/-.

The word cheating is defined in Section 415 of IPC and according to it, "whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Section 420 deals with cheating and dishonest delivery of property. But, the grievance of the petitioner comes under Section 420 i.e., 'Cheating and dishonestly inducing delivery of property': whoever cheats and thereby dishonestly induces the person i.e., the complainant deceived to deliver any property to any person. Here, the petitioner/accused induced the *de facto* complainant to part with Rs.6,75,000/- to be paid to Satyanarayana Bughatha, who is the owner of the property, but, paid Rs.4,00,000/- as advance to the owner and got executed an agreement of sale. Such non payment of Rs.2,75,000/- to the said Satyanarayana as part of sale consideration while withholding the amount by the petitioner would constitute an offence on the face value of it. Therefore, the dispute is of civil nature and the civil dispute cannot be converted into Criminal.

The Apex Court in **M/S Indian Oil Corporation vs M/S Nepc India Ltd., & Ors[3],** laid down three guidelines to exercise the jurisdiction. Since the petitioner induced the *de facto* complainant to part with Rs.6,75,000/-, but retained or withhold an amount of Rs.2,75,000/- for his purposes, directly attracts an offence punishable under Section 420 of IPC and therefore, this Court cannot exercise its jurisdiction and quash the proceedings.

On overall consideration of the facts and circumstances of the case, the petitioner collected an amount of Rs.6,75,000/- from *de facto complainant* to pay the same to Satyanarayana the vendor of the *de facto* complainant under an agreement of sale, but he paid Rs.4,00,000/- to Satyanarayan, and withheld Rs.2,75,000/- for his own purposes. Therefore, on the face value of it, the allegations made in the charge sheet would constitute an offence punishable under Sections 420, 447 and 506 IPC. The allegations further discloses that the petitioner caused hurt to *de facto* complainant and threatened to kill her. Those allegations would attract an offence punishable under Section 323 and Section 506 of IPC. Therefore, I find no grounds to quash the proceedings at this stage.

Accordingly, this Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Dt: 07-11-2016

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[3] 2006 6 SCC 736

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

<u>Crl.P.No.15689 of 2016</u>

Dt. 07.11.2016

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