THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.16342 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed to quash the proceedings in Cr.No.287 of 2009 on the file of Central Crime Station, Hyderabad, registered for the offences punishable under Sections 468, 471, 406 and 420 IPC, against petitioner/A15.

2. The de-facto complainant, who is the Regional Manager of State Bank of India, Region-II, lodged a complaint against petitioner/A15 along with 14 borrowers, alleging that the petitioner sold the property to A1 to A14 and made the Bank to part with huge amount i.e., Rs.44 lakhs, though the property was already sold to third parties as on the date of sanction of loan and that the original borrowers committed default in payment of monthly instalments, thereby the Bank had initiated proceedings under the SARFAESI Act and later, sold the property to the highest bidder in the auction, but the possession of property was not delivered as it was already sold to third parties. Therefore, based on the complaint, the police registered FIR in Cr.No.287 of 2009 for the offences punishable under Sections 468, 471, 406 and 420 IPC, took up investigation and recorded the statement of petitioner. However, the evidentiary value of such confessional statement cannot be decided at this stage.

3. The present petition is filed on the ground that the petitioner was not the owner or builder, but his wife Smt P.T.Dhana Lakshmi was the developer and when she was at Newzealand, she executed a special power of attorney in favour of petitioner and being a

special power of attorney holder, petitioner executed the documents and that there was a mistake in mentioning flat numbers in the original sale deeds, but later, he executed a rectification deed after sanction of loan. Therefore, he had no intention to cheat any one or misappropriate the amount and that he is neither executant of sale deed nor the person delivered possession of property to the borrowers and he has no direct contact with the second respondent-Regional Manager of the Bank. Therefore, the investigating agency shall not proceed against the petitioner for the above offences allegedly committed by him.

4. During hearing, Sri D. Prabhakara Rao, learned counsel for petitioner, would contend that there is a lot of process to be followed at the time of sanction of loan and even after initiation of proceedings under SARFAESI Act, like conducting auction and taking possession etc., none of the details was disclosed in the complaint and even the highest bidder in the auction did not visit the property. He would further contend that in the absence of such details, it is difficult to fasten any liability to the petitioner, who is the special power of attorney holder and husband of developer Smt P.T.Dhana Lakshmi and therefore, the complaint against petitioner is nothing but abuse of process of law.

5. Learned Public Prosecutor for the State of Telangana would draw the attention of this Court to the confessional statement of petitioner recorded by police during investigation, wherein the petitioner accepted about the execution of documents and false reference of flat numbers in the sale deed etc.

6. Undoubtedly, the present petition is filed to quash the proceedings at the stage of investigation in Cr.No.287 of 2009 and there is much delay in lodging the complaint by the second respondent since the fraud was detected in the year 2006, but the complaint was lodged in 2009 i.e., on 28.10.2009. The de-facto complainant is the Regional Manager of the Bank and if the delay is one of the grounds to acquit the accused for the offences alleged, the entire case is based on documentary evidence including the sale deed and rectification deed executed by petitioner and that the loan was sanctioned even before execution of rectification deed. Moreover, the property mentioned in the schedule annexed to the sale deeds was already sold to third parties suppressing the earlier sale deeds. The petitioner being special power of attorney holder of the developer executed those sale deeds and therefore, the person, who executed sale deeds in respect of the property which was already sold, was within his exclusive knowledge and it amounts to cheating as defined under Section 415 IPC.

7. It is also contended by petitioner that he furnished a copy of the rectification deed to the Bank and a postal acknowledgment receipt of the document is also annexed to the present petition. But mere sending a copy of rectification deed would not change the situation since a mortgage was created on specific immovable property by the date of execution of rectification deed. Therefore, it would not change the situation and it is not a ground to exonerate the petitioner from his liability for the alleged offences.

8. Undoubtedly, the investigation in the present case is not completed and in order to quash the proceedings at the stage of

investigation, there must be some strong circumstances. A similar question came up before the Apex Court in **State of Orissa V. Saroj Kumar Sahoo**[1] wherein it was held as under:

> "The inherent powers under Section 482 Cr.P.C., should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are imcomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.
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> While exercising jurisdiction under Section 482 of Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused".

In **Ramesh V. State of Tamilnadu**[2] the Supreme Court laid down certain guidelines to exercise inherent jurisdiction under Section 482 Cr.P.C., which read as under:

> (i) That the allegations are frivolous and without any basis;
>
> (ii) Even according to the F.I.R., no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence;
>
> (ii) Taking cognizance of the alleged offences at this stage is barred under Section 468(1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2).

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[1] (2005) 13 SCC 540
[2] AIR 2005 SC 1989

9. In the present facts of the case, the allegation made in the present petition is delay in filing the complaint. It is insignificant, if the petitioner is able to explain the delay in lodging the complaint by second respondent being Regional Manager and it is not his case of mala *fide* prosecution. On the other hand, the material on record is sufficient to proceed further and even otherwise, it is not appropriate stage to exercise jurisdiction to quash the proceedings based on incomplete material and by applying the principles laid down in **Saroj Kumar Sahoo** referred supra. Therefore I find that it is not appropriate stage to quash the proceedings in Cr.No.287 of 2009 and consequently, the criminal petition is liable to be dismissed.

9. In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

28th November, 2016

sj