THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11682 of 2015

ORDER

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.534 of 2011 on the file of the Judicial Magistrate of First Class for Trial of Prohibition and Excise Offences, Nellore, registered for the offences punishable under Sections 120-B, 406 and 420 IPC, against petitioner/A1.

2. The second respondent/complainant filed a private complaint before the Judicial Magistrate of First Class for Trial of Prohibition and Excise Offences, Nellore, alleging that the petitioner/A1 conspired with A2 being his friend, and A3- Sub-Registrar, and committed criminal breach of trust thereby cheated her to part with the valuable property worth Rs.49,50,000/- while paying an amount of Rs.15 lakhs as advance and issued cheques for remaining sale consideration. It is alleged that when those cheques were presented before the Bank, they were dishonored on account of instructions given by the petitioner to the Bank to stop payment. It is further alleged that the petitioner with intent to cheat the complainant gave instructions to the Bank to stop payment. It is also alleged that as the Court did not take cognizance, the matter was carried in revision and on the directions of the revisional Court, the Court took cognizance of the aforesaid offences and issued process.

3. Learned counsel for petitioner mainly contended that execution of an agreement-cum-GPA for a sum of Rs.49,50,000/-, while receiving advance of Rs.15 lakhs and cheques for the balance

sale consideration, and later, execution of sale deed in favour of A2 by the complainant, are purely civil transactions, but the Court took cognizance of the offences without applying its mind to the facts of the case and as the civil litigation was converted into criminal case, it is nothing but abuse of process of the Court and in such case, this Court, in exercise of jurisdiction under Section 482 Cr.P.C., quash the proceedings. He further contended that this Court by orders dated 02.11.2012 and 25.09.2013 in Crl.P.Nos.4185 and 9192 of 2012 quashed the proceedings against A2 and A3 respectively, and therefore, the petitioner is entitled to claim quashing of proceedings on the same footing and thus, he prays this Court to quash the proceedings by exercising jurisdiction under Section 482 Cr.P.C.

4. Per contra, learned counsel for the second respondent Sri M. Pratap Singh would contend that the petitioner stands on a different footing as A3-Sub-Registrar registered the document while discharging his duties and claimed protection under the provisions of Indian Registration Act and similarly, A2 has no knowledge about the dispute between the petitioner and the complainant and therefore, A2 being innocent purchaser is not liable for punishment of any of the offences alleged and therefore, this Court quashed the proceedings against A2 and A3. He further contended that mere quashing of proceedings against A2 and A3 will have no bearing on petition since he is the prime accused in the crime and prayed for dismissal of the petition.

5. As seen from the allegations made in the complaint and in the present petition, the undisputed facts are that the petitioner purchased the property for a sum of Rs.49,50,000/- under agreement-cum-GPA from the complainant, paid Rs.15 lakhs as advance, issued cheques for the balance sale consideration and when those cheques were presented in the Bank, they were dishonored, but the petitioner sold part of the said property to A2 by executing a registered sale deed dated 03.08.2010 for a sum of Rs.7,50,000/- vide registered document No.2126 of 2010. Undoubtedly, there was a contractual relationship between the petitioner and the second respondent, which attracts civil liability, but the petitioner issued a cheque for a sum of Rs.34,50,000/- on 26.02.2011 towards balance sale consideration and later issued instructions to the Bank to stop payment. However, on presentation of cheque, it was returned with an endorsement 'payment stopped by drawer'. Undisputedly, the relationship between the petitioner and the complainant is principal and agent and it would fall within the ambit of Section 202 of Indian Contract Act i.e., agency coupled with interest. Therefore, the relationship between the petitioner and the second respondent is like trustee and beneficiary and as per the terms of agreement of sale, petitioner has to pay the entire sale consideration of Rs.49,50,000/-, but paid only Rs.15 lakhs and issued cheque for balance of Rs.34,50,000/- and conveniently, gave instructions to the Bank to stop payment. That itself indicates the dishonest intention *prima facie* on the part of petitioner. If the petitioner committed breach of trust, he is liable for punishment

under Section 406 IPC. Section 405 IPC defines 'criminal breach of trust', which reads as under:

> "Whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.

6. Here, there is an agreement-cum-GPA, which can create relationship of principal and agent by virtue of legal contract and entrusted with property and dominion over the property, but dishonestly, the petitioner disposed the property in violation of the direction prescribed therein and therefore, the act committed by petitioner would attract the offence punishable under Section 406 IPC on its face value.

7. Learned counsel for second respondent contended that the petitioner is liable for punishment for cheating and dishonestly inducing to deliver the property. Section 415 IPC defines 'cheating' , which reads as under:

> "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".

Here, the petitioner induced the complainant-second respondent to part with her property by virtue of the agreement of sale-cum-GPA while agreeing to pay the sale consideration of

Rs.49,50,000/- and paid Rs.15 lakhs only towards advance and issued cheque for an amount of Rs.34,50,000/- and the said cheque was dishonored on account of instructions given by the petitioner to stop payment. These instructions itself indicate the dishonest intention of the petitioner and thereby such act would fall within the definition of 'cheating' as defined under Section 415 IPC and is liable for punishment under Section 420 IPC, if proved, on its face value. Therefore, the allegations made against the petitioner on its face value would attract the offences punishable under Sections 406 and 420 IPC.

8. The other provision of law quoted in the complaint is Section 120-B IPC. Section 120-A IPC defines 'criminal conspiracy', which reads as under:

> " When two or more persons agree to do, or cause to be done-
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

The requirement to constitute the offence under Section 120-B IPC is permissible with two persons. Here, the proceedings against A2, who is the purchaser of the property, were quashed and thereby the allegation made in the complaint would not attract the offence punishable under Section 120-B IPC on its face value. Therefore, taking cognizance and continuing the proceedings against the petitioner for the offence punishable under Section 120-

B IPC is nothing but abuse of process of law in view of the order passed in Crl.P.No.4185 of 2012 against A2.

9. This Court can exercise jurisdiction under Section 482 Cr.P.C., in order to give effect to any order under the Code of Criminal Procedure to prevent abuse of process of Court or to secure the ends of justice. In **R.P.Kapur v. State of Punjab[1],** the Apex Court laid down the following guidelines.

> ""The inherent 'Jurisdiction of the High Court could be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The following are some categories of cases where the inherent jurisdiction could and should be exercised to quash proceedings:
> (i) where there was a legal bar against the institution or continuance of the proceedings;
> (ii) where the allegations in the first information report or complaint did not make out the offence alleged; and
> (iii)where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge.

Similarly, the Apex Court in **State of Haryana v. Bhajanlal[2]**, laid down the following 7 guidelines, which are extracted hereunder:

> (a) 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;
>
> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

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[1] AIR 1960 SC 866
[2] 1992 Supp(1) SCC 335

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 **Bhajanlal**, guideline No.1 is relevant, according to which, if the allegations made in the First Information Report or the complaint are taken at their face value and accepted in their entirety, they do not *prima facie* constitute any offence or make out a case against the petitioner, this Court can exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings, but the allegations made in the complaint would constitute offences punishable under Sections 406 and 420 IPC on its face value, but not the offence under Section 120-B IPC in view of the order passed by this Court in Crl.P.No.4185 of 2012 dated 02.11.2012. Therefore, the complaint against the petitioner for the offence under Section 120-B IPC is hereby quashed while directing the trial Court to proceed with trial of the offences punishable under Sections 406 and 420 IPC.

10. One of the major grounds raised by learned counsel for petitioner is that the transaction is purely civil in nature and attempt made by the complainant in converting the civil dispute into criminal case amounts to abuse of process of the Court. No doubt, the agreement of sale-cum-GPA for payment of amount comes under civil law, but issuing instructions to stop payment to the Bank indicates the dishonest intention of petitioner, and paying the amounts to the complainant, disposing the property to A2 and converting the amounts on his own, amount to cheating. However, in **M/s.Indian Oil Corporation vs. NEPC India Ltd**[3], a similar question came up for consideration before the Apex Court and it was held as under:

> (v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. ;

When the facts in this case attract both civil and criminal liabilities, this Court cannot quash the said proceedings by exercising jurisdiction under Section 482 Cr.P.C. on the mere ground that the complainant can take recourse to the remedy available under civil law. Therefore, I find no substance in the request of learned counsel for petitioner to quash the proceedings against petitioner for the

[3] 2006(6) SCC 736

offences under Sections 406 and 420 IPC while quashing the proceedings against him for the offence under Section 120-B IPC.

11. In view of the foregoing discussion, I find no ground to quash the proceedings against the petitioner for the offences punishable under Sections 406 and 420 IPC.

12. In the result, the Criminal Petition is allowed in part, quashing the proceedings against the petitioner for the offence under Section 120-B IPC while dismissing the claim to quash the proceedings under Sections 406 and 420 IPC in C.C.No.534 of 2011 on the file of the Judicial Magistrate of First Class for Trial of Prohibition and Excise Offences, Nellore. Miscellaneous petitions, if any, pending in the criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY J

15th November, 2016

sj