

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.743 of 2011

ORDER:

The criminal petition is filed by the petitioners seeking for quash of the proceedings in Cr.No.305 of 2010 on the file of the Central Crime Station, Hyderabad. The offences alleged are under Sections 406, 420, 4563, 468, 471 and 478 of the Indian Penal Code, 1860.

2. Heard counsel for the petitioners and the learned Public Prosecutor, who took notice for respondent No.1. None appears for respondent No.1 in spite of notice.

3. The facts of the case, as reflected in the complaint, are as follows:

The complainant is the General Power of Attorney holder of A1 in respect of the disputed property, which is in Sy.No.129/11, Paiki. The complainant and A1 entered in to construction agreement along with GPA dated 20.08.1988. A2, with a *mala fide* intention and without the knowledge of the complainant, entered into another agreement, which is an agreement of sale and GPA, with A1, dated 04.40.2008. A1 suppressed the fact that GPA with the complainant is still in existence and both A1 and A2 committed fraud. The complainant, with the powers under the GPA, entered into agreement of sale with A3, who, by colluding with A1 and A2, cancelled the said agreement on 28.02.2010. So also, A4 to A6 entered into agreements with the complainant and later cancelled the same. A1 to A6 played fraud. A1 and A2 created a fake Government Order and also created one

proceeding of the Chief Commissioner of Land Administration, AP, Hyderabad and based upon the same, they transferred the property.

4. The counsel for the petitioners takes this Court to the background facts of this complaint. He submits that the agreement with the complainant by A1 is a development agreement and the accused purchased the undivided share in the said land and the proposed flats and as there was inordinate delay in the construction of flats, they cancelled the agreement and the suit was filed in O.S.No.2660 of 2004 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad by one Vipin Kumar Mehra, who is A6, for refund of the money and the suit was decreed in his favour. In pursuance of the said decree, the deed of cancellation was executed by A1 and the amount was refunded.

5. In the said deed of cancellation, which is an irrefutable document, being a registered document, it is mentioned that the cancellation is due to delay and non-performance of the earlier agreement made with the complainant. It also shows that the complainant is a party to the said suit and hence, the complainant cannot contend that it was done behind his back. In **RAJIV THAPAR v. MADAN LAL KAPOOR**¹, the apex court permitted certain documents to be relied upon. Relevant paragraph reads as follows:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under [Section 482](#) of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the

¹ 2013(3) SCC 330

stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under [Section 482](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges

levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

However, the complainant does not make out any grievance that is caused to him. It is only due to the delay caused by him that the agreement entered into by the accused got to be cancelled. Hence, in such circumstances, it cannot be said that there is any prejudice caused to the complainant.

6. Absolutely, the facts of the case do not attract any of the alleged offences. The contents of the complaint with regard to the offence under Sections 468 and 475 are concerned, are not at all clear. Hence, the continuation of the proceedings against the petitioners would only be a futile exercise and would result in abuse of process of law.

The criminal petition is allowed and all further proceedings in Cr.No.305 of 2010 on the file of the Central Crime Station, Hyderabad against the petitioners herein are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

November 30, 2017
DSK

T. RAJANI, J

