

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 9488 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in Crime No. 714 of 2017 on the file of Station House Officer, L.B.Nagar, Ranga Reddy District, registered for the offences punishable under Sections 420, 423, 406, 506, 323, 120-B r/w 34 IPC.

2. Petitioner is the first accused. The second respondent Sagi Raju Uday Bhaskar Raju, laid a report with the police on 22.5.2017 alleging that the petitioner along with second respondent purchased an extent of 679 sq.yards and entered into an agreement with the other accused 4 to 6 and obtained an agreement of sale dated 16.6.2016 for Rs. 2,36,65,000/- and paid an amount of Rs. 40,00,000/- on the date of agreement by incorporating various terms and agreed to pay balance of sale consideration of Rs. 1,96,65,000/- within 90 days from the date of agreement and in the event of failure to pay the balance amount within the time stipulated, the petitioner and the second respondent agreed to pay the interest at the rate of Rs. 1.50 ps per annum and obtained registered sale deed.

3. On enquiry, the petitioner came to know that the land purchased by the petitioner is notified as public property reserved for public purpose and vendors K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao are not the owners of the property since the petitioner is one of the joint agreement holder, who allegedly negotiated with K. Udaya Rani, K. Naga Chandrika

and Chukkapalli Chandrasekhar Rao, and therefore, the report is lodged against the petitioner also.

4. Since the police after due investigation, did not take any action. The second respondent filed a private complaint repeating the allegations. But the Magistrate while exercising power under Section 156(3) Cr.P.C, referred the case to the police for taking necessary action. On receipt of reference from the Magistrate, the present crime came to be registered for the offences under Sections 420, 406, 423, 506, 323 & 120-B r/w 34 IPC in Crime No. 714 of 2017.

5. The contention of the petitioner is that the petitioner is also a joint purchaser of property under agreement of sale who allegedly paid Rs. 40,00,000/- along with second respondent towards part of sale consideration to K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao, and the remedy available to the second respondent is to recover the amount or to file an appropriate proceedings in Civil Court but the joint agreement holder dragged to criminal litigation and he allegedly negotiated with the vendors viz., K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao, and the petitioner did commit no offence, and even if the allegations made in the complaint taken as true, those allegations would not constitute an offence.

6. This Court initially issued notice to respondent No. 2 and counsel served notice on second respondent but none appeared and there was no representation before this Court on behalf of second respondent.

7. During hearing, learned counsel for petitioner, would contend that the allegations made in the complaint would not

constitute an offence much less an offence punishable under Sections 420, 406, 423, 506, 323 and 120-B r/w Section 34 IPC and at best, the petitioner being a joint agreement holder is also entitled to claim necessary relief from the accused Nos.4 to 6 viz., K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao and merely because he participated in the negotiations, he cannot be prosecuted. It is further contended that the liability if any, is civil in nature against K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao and the petitioner is not liable either under criminal law or under civil law for the alleged misrepresentation made by K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao, and prayed this Court to quash the proceedings.

8. The allegations made in the report lodged with the police dated 22.5.2017 and in the private complaint, it is clear that the petitioner is also an agreement holder along with the second respondent and both jointly purchased the property covered by the agreement of sale dated 16.6.2016 for Rs. 2,36,65,000/- and paid Rs. 40,00,000/- as advance. In case, the vendors K. Udaya Rani, K. Naga Chandrika and Chukkapalli Chandrasekhar Rao had no title to the property, both petitioner and second respondent can proceed and recover the amount, if paid as advance under agreement of sale, or take action against them under appropriate law. But this petitioner cannot be made liable either under criminal law or civil law being a joint-agreement holder. The allegations made in the complaint, on its face value, did not constitute an offence much less the offences punishable under Sections 420, 406, 423, 506, 120-B and 323 r/w 34 IPC, in which

case, this Court can exercise power under Section 482 and quash the proceedings in view of the guidelines laid down by the Apex Court in **State of Haryana v. Bhajan Lal**¹

9. In **State of Haryana v. Bhajan Lal (supra)** this Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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.

(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 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

¹ 1992 Supp. (1) SCC 335

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.

10. According to guidelines 1, 3 & 4 and the allegations made in the FIR or in the charge sheet on its face value do not *prima facie* constitute any offence and this Court can exercise inherent jurisdiction under Section 482 Cr.P.C and quash the proceedings.

11. The law laid down by the Apex Court in **G. Sagar Suri Vs. State of U.P.**², the Apex Court held that when a civil litigation was given a colour of criminal offence, it amounts to abuse of process of law and the Court can exercise inherent jurisdiction under Section 482 Cr.P.C to quash the proceedings.

12. It is a peculiar case where the joint agreement holder is arrayed as accused and filed a complaint to proceed against him for serious offences referred supra. Merely because the petitioner participated in the negotiations no dishonest intention is attributable to the petitioner at the inception of prosecution. Therefore, the very filing of private complaint is an abuse of process of Court and unless such abuse is prevented by this Court by exercising power under Section 482, it is difficult to administer criminal justice.

13. As observed by this Court in the earlier paragraphs, the allegations made against the petitioner would not constitute an offence much less an offence punishable under Sections 420, 406, 423, 506, 120-B and 323 r/w 34 IPC, and filing of a private

² AIR 2000 SC 754

complaint by the second respondent is an abuse of process of Court giving colour of criminal offences to the civil litigation against accused Nos. 3 to 5, hence, I find it is a fit case to quash the proceedings.

14. In the result, Criminal Petition is allowed and the proceedings in Crime No. 714 of 2017 on the file of SHO, L.B.Nagar are quashed. Miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 22.11.2017
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