THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9744 OF 2017

ORDER:

This petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') is filed by the petitioners-accused Nos. 3 to 7 to quash the proceedings in C.C.No. 293 of 2017 on the file of the Court of III Additional Chief Metropolitan Magistrate at Gajuwaka, Visakhapatnam (for short, 'the Court below').

2. Respondent No. 1 filed a private complaint before the Court below against the petitioners and two others for the offence punishable under Sections 120-B, 420, 421, 424, 425, 463 read with Section 34 of the Indian Penal Code (for short, 'I.P.C.') and the same was referred to the Station House Officer, Gajuwaka Police Station, Visakhapatnam, exercising power under Section 156 (3) Cr.P.C. On the strength of the reference, the police registered a case in crime No. 75 of 2017 and issued F.I.R. on 30-01-2017. As seen from the allegations made in the complaint, the petitioners are only witnesses on indemnity bonds as alleged in 9th line from bottom of the 2nd page of the charge sheet. It is specifically alleged that accused Nos. 1 to 3 in collusion with accused Nos. 4 to 7-petitioner Nos. 2 to 5 applied their masterminds to grab the property of respondent No. 1 in fraudulent manner. Thus, the role played by accused Nos. 4 to 7 is only attestation of indemnity bonds. Though omnibus allegations are made in the charge sheet that accused Nos. 4 to 7 also accompanied with accused Nos. 1 to 3 to the house of respondent No. 1 and made her to sign on blank stamp papers, the specific overt act attributed to petitioner Nos. 2 to 5 is that they attested the bond papers. Therefore, the police registered the crime and investigated into. During investigation, the investigating agency examined as many as six witnesses,

recorded their statements under Section 161 Cr.P.C. and collected material. On the strength of the material and evidence collected and the statements of the witnesses, the police filed charge sheet finally against all the accused with a specific allegation that petitioner Nos. 2 to 5 attested the indemnity bonds enabling accused No. 1 to get the property released and mutate his name in revenue records.

3. The present petition is filed to quash the proceedings on the ground that attesters *i.e.* petitioner Nos. 2 to 5 are not liable for any of the offences referred *supra* and similarly petitioner No. 1 is also not liable for any of the offences referred *supra*. Learned counsel for respondent No. 1 argued in support of the prosecution case while contending that the petitioners participated in the incident by forcing or coercing respondent No. 1 in obtaining signatures on blank stamp papers, creation of consent letters and indemnity bonds and more particularly, petitioner Nos. 2 to 5 attested those indemnity bonds. Hence, they are also equally liable for punishment along with accused Nos. 1 to 3 and prayed to dismiss the petition.

4. The specific overt act attributed to petitioner Nos. 2 to 5 is that they attested the indemnity bonds and there was registered correspondence between the parties earlier to filing of the complaint. If the allegation made in the complaint against petitioner Nos. 2 to 5 if accepted on its face value *i.e.* attestation of indemnity bonds, still they are not liable for prosecution as they are only attesters. The word attestation is defined under Section 3 of the Transfer of Property Act, 1882, which reads as follows:

> *"Attested in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant,*

> *or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time and no particular form of attestation shall be necessary"*

The attester is not required to know the contents of the documents and the executant need not sign in the presence of the attester. When petitioner Nos. 2 to 5 are only attesters of the documents as per the material collected by the investigating agency, they cannot be made liable for any of the offences referred *supra*. This Court in ***Yelakala Rangarao and others Vs. State of Andhra Pradesh and another***[1] discussed about the liability of the attesters and held that they are not liable to be prosecuted for any of the offences merely on the ground that they attested the document. Thus, in view of the law declared by this Court, the purchaser and the attesters of the document allegedly created or fabricated are not liable to be prosecuted. As far as petitioner No. 1-accused No. 3 is concerned, he allegedly participated in the act of accused Nos. 1 and 2 obtaining signatures of respondent No. 1 on blank stamp papers and except that, no other overt act is attributed against this petitioner. In the statements of the prosecution witnesses recorded by the police during investigation under Section 161 Cr.P.C., they stated that the petitioner along with other accused came to the house of respondent No. 1 and after receiving general courtesies obtained her signatures on blank stamp papers. No specific overt act is attributed except the presence of the petitioner along with other accused. The statement of husband of respondent No. 1 is also on the same lines. Therefore, the allegations made in the charge sheet based on the evidence collected during investigation except disclosing that she was one of the persons present at the time of the alleged obtaining signatures on stamp papers, nothing was stated about forcing or

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[1] 2013 (1) ALD (Crl.) 269 (AP)

coercing respondent No. 1 to sign on those papers. Therefore, the allegations made against these petitioners would constitute no offence even if they are taken on their face value and thereby proceedings against these petitioners would certainly amount to abuse of process of the Court. On this ground alone, the proceedings against these petitioners are liable to be quashed.

5. As seen from the material, there was legal correspondence between the parties. On 24-09-2016, respondent No. 1 got issued legal notice to which the petitioners got issued replay on 15-10-2016, a perusal of which would go to show that the dispute is purely civil in nature with regard to sale of the property. When the dispute is purely civil in nature, the Court would not normally encourage the parties to convert the civil litigation into criminal litigation as held by the Apex Court in ***G.Sagar Suri Vs. State of U.P***[2]. In one of the earliest judgments of the Supreme Court in ***Hari Prasad Chamaria Vs. Bishun Kumar Surekha and others***[3], it was held that a mere breach of contract cannot give raise to criminal prosecution since the remedy is before the civil Court. Similarly, in ***Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another***[4], the Apex Court held that in determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed. Therefore. it is the intention which is the gist of the offence. To

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[2] 2000 (2) SCC 636
[3] 1973 (2) SCC 823
[4] 2004 (4) SCC 168

hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. In ***Indian Oil Corporation Vs. NEPC India Limited and others***[5], the Apex Court placed reliance on ***G.Sagar Suri*** (*supra*). In the recent judgment of the Madras High Court in ***Rakesh P.Sheth and others Vs. State and others***[6], it was held that when there is sufficient material to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of High Court under Section 482 Cr.P.C. can be invoked. Likewise, when the complaint *prima facie* discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint. It is not just to permit the police to continue with the investigation and the same is liable to be quashed. If these principles are applied to the present facts of the case, the dispute between the parties is with regard to purchase of immovable property and respondent No. 1 converted the civil litigation into criminal. Thus, it amounts to abuse of process of the Court.

6. The powers of this Court under Section 482 Cr.P.C. are limited and this Court can exercise such powers only to implement the orders passed under the code or to prevent abuse of process of law or to meet the ends of justice. The Apex Court in ***State of Haryana Vs. Bhajanlal***[7] laid down seven guidelines which are as follows:

> *"(1) Where the allegations made in the first information report or the complaint, even if hey are taken at their face value and accepted in their*

[5] 2006 (6) SCC 736
[6] 2017 (3) L.S. (Madras) 65
[7] 1992 Supp. (1) SCC 335

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 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."*

As per guidelines 2 and 3, if the allegations made in the complaint if taken on their face value would not constitute any offence, the Court may exercise power and quash the proceedings. Similarly, as per guideline No. 7, if the Court finds that the allegations made in the complaint are to wreak vengeance against the accused as an abuse of process of the Court, the Court may exercise such power to scuttle the proceedings at the threshold. In the case on hand, the allegations made in the charge sheet with regard to attestation by petitioner Nos. 2 to 5 and the presence of petitioner No. 1 at the time when accused Nos. 1 and 2 allegedly obtained signatures would not constitute an offence much less any of the offences referred *supra*. Therefore, filing of such complaint would amount to abuse of process of the Court. Hence, I find that it is a fit case to quash the proceedings against the petitioners.

7. In the result, the criminal petition is allowed by quashing the proceedings against the petitioners-accused Nos. 3 to 7 in C.C.No. 293 of 2017 on the file of the Court of III Additional Chief Metropolitan Magistrate at Gajuwaka, Visakhapatnam. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 07-12-2017. **_M.SATYANARAYANA MURTHY, J._**

JSK