

THE HON'BLE DR JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7956 of 2010

ORDER:

The petitioner, K.V. Rao, is accused in C.C.No.532 of 2010 on the file of I Additional Chief Metropolitan Magistrate, Vijayawada. The said C.C. is the outcome of the private complaint of the second respondent/complainant – B.V.S. Krishnaiah. The learned Magistrate has taken cognizance of offences punishable under Sections 420 and 506 IPC.

The averments in the private complaint, dated 14.06.2010, show that the complainant approached one G. Hanumantha Rao in October, 2008 to purchase the property in question. He was informed subsequently that it was sold to the petitioner/accused. While so, the accused approached Ch. Rajasekhara Rao, brother-in-law of the complainant, through S. Murali Krishna, in December, 2008, to sell the property to the complainant saying that he entered into an agreement with the original owner, G. Hanumantha Rao, by paying Rs.7,50,000/- on 16.10.2008. After negotiations, there was a mutual agreement, by which, the complainant agreed to purchase the property from the accused for a sale consideration of Rs.44,00,000/-, through his brother-in-law, by name, Ch. Rajasekhara Rao, and Rs.3,51,000/-

was paid as an advance by the complainant and the accused signed the agreement on 22.12.2008 and promised to register the sale deed and transfer the property after receiving the balance Rs.40,49,000/-. The accused was the scribe of the agreement. In the course of oral discussions, it was proposed by the accused that the complainant should pay Rs.8,00,000/- by 31.12.2008 failing which Rs.1,00,000/- would be deducted from the advance amount of Rs.3,51,000/- and Rs.2,51,000/- would be returned to the complainant. The complainant rejected the proposal of the accused but the accused forcibly induced the complainant to accept that if the balance amount would not be paid by 31.01.2009, the total amount paid till that date would be returned to the complainant and the agreement would be cancelled. However, the accused managed the document writer in making the agreement silent about refund of the amount paid till 31.01.2009. Unable to mobilize Rs.8,00,000/-, on 31.12.2008, the complainant sought refund of the advance amount of Rs.3,51,000/-. Instead of getting refund of the amount pursuant to the agreement, on repeated requests of the accused, the complainant paid Rs.4,00,000/- towards part sale consideration on 07.01.2009 and obtained receipt. This shows, the complainant and the accused are abide by the agreement. But, in April, 2009, when the complainant approached the accused to pay balance

sale consideration, the accused declined the proposal and demanded additional amount of Rs.25,00,000/- for transfer of the property. To the shock and surprise of the complainant, in May, 2010, when the agreement was in force, the accused sold the property, covered by it, to three persons which is nothing but cheating the complainant. Hence, to take action.

A reading of the sale agreement, dated 22.12.2008, shows that total sale consideration is Rs.44,00,000/- and the property is, an extent of Ac.1.10 cents, covered by R.S. Nos.170/1B, 170/3, 170/6 and 170/7 respectively, situated at Gudavalli Village, Gudavalli Gram Panchayat, Sub-Registrar of Gunadala, Vijayawada East, Krishna District. The accused himself entered into non-possessionary agreement with the original owner, G. Hanumantha Rao, on 16.10.2008 and thereafter, he entered into agreement with the complainant and at the time of the agreement, on 22.12.2008, the complainant paid Rs.3,51,000/- and the balance to be paid by 31.01.2009, and Rs.8,00,000/- to be payable before 31.12.2008, failing which, out of Rs.3,51,000/-, Rs.1,00,000/- would be deducted and balance would be refunded and if the amount was not paid fully by the stipulated date, 31.01.2009, the agreement ceases to exist.

The terms of the agreement are not in dispute by the complainant. The agreement was dated 22.12.2008. The private complaint was filed on 14.06.2010, and the main allegation is, after May, 2009, the accused sold the property to three persons, while the agreement is in force. In fact, the agreement speaks, if the entire amount could not be paid by 31.01.2009, the agreement ceases to exist, and even by 31.12.2008, at least Rs.8,00,000/- to be paid, failing which, the agreement would be cancelled and Rs.3,51,000/- paid at the time of the agreement would be returned after deducting Rs.1,00,000/-. Thereby, at best, as per the terms, the agreement ceases to exist after 31.01.2009, if not by 31.12.2008, and once leave about the civil remedy, if any, that was not even invoked stating that the agreement ceases to exist. There is no offence of cheating or deception but for a civil transaction for refund of the amount pursuant to the agreement, as such, the cognizance taken by the learned Magistrate is unsustainable, as rightly mentioned in the grounds urged by the accused in the quash petition, though it is the contention of the learned counsel for the second respondent/complainant that there is a *prima facie* accusation against the petitioner/accused for taking cognizance of offence, by the learned Magistrate. From the transaction supra, it appears, there is no offence of cheating, much less, with any dishonest intention and deception from the

inception, more particularly, as per the settled law including from the expressions of the Apex Court in **Hridaya Ranjan Prasad Verma and others v. State of Bihar and another¹**; **S.W. Palanitkar and others v. State of Bihar and another²**; **Gangadhar Kalita v. State of Assam and others³**. Several other expressions are also referred in the expressions of this Court in **Criminal Petition No.2715 of 2013, dated 28.01.2016 (J. Sesha Ratna Kumar v. State of Andhra Pradesh)**; **G.S.V. Krishna Rao v. State of Andhra Pradesh and others⁴**; **Indu Dalmia and others v. State of Andhra Pradesh and another⁵**, besides the expression of the Apex Court in **V.Y. Jose and another v. State of Gujarat and another⁶** and the expression of the three-Judge bench of the Apex Court in **Nageshwar Prasad Singh @ Sinha v. Narayan Singh and another⁷**.

In the result, the Criminal Petition is allowed and the proceedings in C.C.No.532 of 2010, wherein the learned I Additional Chief Metropolitan Magistrate, Vijayawada, has taken cognizance of the offences punishable under Sections 420 and 506 IPC, are quashed. Bail bonds of the accused shall stand cancelled.

¹ (2000)4 Supreme Court Cases 168

² (2002) 1 Supreme Court Cases 241

³ (2015) 9 Supreme Court Cases 647

⁴ 2016(1) ALT CrI. 270

⁵ 2016(1) ALD (CrI.) 659

⁶ (2009) 3 Supreme Court Cases 78

⁷ (1998) 5 Supreme Court Cases 694

Pending miscellaneous applications, if any, shall also stand closed.

Dr. B. SIVA SANKARA RAO, J

13th OCTOBER, 2017.

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