

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6708 OF 2012

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.79 of 2012 on the file of Jaggayyapet Police Station, Krishna District for the offences punishable under Section 420 I.P.C & Section 156(3) Cr.P.C.

The second respondent/defacto complainant filed a private complaint before the Judicial First Class Magistrate, Jaggayyapet alleging that on 08.08.1996, he entered into an agreement of sale of immovable property with Sri Satya Priya Real Estate of Jaggayyapet for which the accused was the Managing Director. The second respondent purchased property from the accused and continued to pay instalments till November, 2011. But, the petitioner/accused did not execute a register sale deed and the second respondent issued registered notice to the accused on 06.02.2012. Though notice was received by the accused on 08.02.2012, he did not take any action. When the second respondent filed a complaint before the police, the police also did not take any action. Hence, the second respondent filed private complaint before the Judicial First Class Magistrate and the accused filed the present criminal petition.

The main contention of the petitioner before this Court is that the dispute is with regard to the immovable property and finally a complaint was lodged instead of approaching the Civil Court for specific performance is nothing but abuse process of

Court and therefore, urged that the proceedings are liable to be quashed.

In support of his contention, learned counsel for the petitioner drawn attention of this Court to the judgment of the Supreme Court in **Suresh v. Mahadevappa Shivappa Danannava and another**¹ and judgment of this Court in **Narne Estates Private Limited, Secunderabad and others v. Dr. E. Surender Rao and another**².

Learned counsel for the second respondent would contend that the second respondent paid 20 instalments but the petitioner did not execute registered sale deed. Therefore, it amounts to an offence.

An identical question came up before this Court in **Narne** case and this Court held that to constitute an offence punishable under Section 420 I.P.C, there must be a fraudulent intention at the time of inception and in the absence of any allegation about dishonest intention at the time of inception of agreement, it would not attract an offence punishable under Section 420 IPC. In the facts of the above judgment, the petitioner was a private limited company carrying on real estate business offered to sell plots on instalment basis and the petitioner/Managing Director of the firm entered into an agreement while delivering the property and the second respondent paid instalments to the petitioner as agreed, on different occasions. But in terms of agreement, the petitioner did not comply the demand for execution of registered sale deed. In

¹ AIR 2005 SC 1047

² 2006 (2) ALD (Crl.) 416 (AP)

such circumstances, this Court concluded that the complaint is not maintainable, since it is an abuse of process of Court.

In **Suresh** case a complaint was filed alleging that appellant executed agreement to sell house and as per agreement Rs.1,25,000/- was paid as advance. But the appellant did not execute sale deed despite notice. Complaint filed after more than 11 years. The Supreme Court held that the complaint is not maintainable and liable to be quashed.

Similarly in **Anil Mahajan v. Bhor Industries**³, a similar question came up for consideration where steel grip belts were supplied on credit basis, but the purchaser did not pay the sale consideration, as agreed and thereupon a private complaint was filed. The Court held that it would attract civil liability and it is a case of purely civil in nature and it appears, by filing a complaint, civil litigation is converted into criminal case. Therefore, in view of the law declared by the Supreme Court and this Court in judgments referred supra, filing of the present complaint is nothing but abuse of process of the Court.

In **State of Haryana v. Bhajan Lal**⁴ this Court considered in detail Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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:

³ 2005 (10) SCC 228

⁴ 1992 Supp. (1) SCC 335

“(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 to 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.

According to guideline No.3 of **Bhajanlal** case, 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. In view of guideline no.3 of **Bhajanlal** case, the proceedings are liable to be quashed, as the material on record do not disclose committing of any offence and thereby the prosecution is groundless.

In the result, the criminal petition is allowed by quashing the proceedings in Crime No.79 of 2012 on the file of Jaggayyapet Police Station, Krishna District. However, the second respondent may address his grievance in appropriate forum.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:21.02.2017

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