**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION Nos.945, 949, 948, 946 and 920 OF 2013**

**COMMON ORDER**:

These criminal petitions are filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.Nos. 31 of 2013, 32 of 2013, 30 of 2013, 33 of 2013 and 34 of 2013 respectively on the file of Special Judicial Magistrate of First Class – cum – Prohibition and Excise Court, Kurnool, registered for the offences punishable under Sections 406, 417 and 420 read with 34 of Indian Penal Code (for short "I.P.C.").

The petitioners in all these petitions are one and the same. The respondents No.2 in all the petitions are defacto complaints respectively.

The main contention before this Court is that there is no averment in the complaints that the petitioners herein induced the defacto complainants with dishonest intention to part with any amount or property and to proceed against the petitioners for the offence under Section 420 of I.P.C. there must be dishonest intention at the time of alleged commission of offence and in the absence of such ingredients the question of proceeding against the petitioners for the offence punishable under Section 420 of I.P.C. does not arise. It is also contended that as nothing was entrusted to the petitioners by way of trust either by implication or expression, the question of criminal breach of trust punishable under Section 406 of I.P.C. does not arise.

The other offence allegedly committed by the petitioners is punishable under Section 417 of I.P.C. Section 417 of I.P.C. deals with punishment for cheating and the allegations made in the complaint would not attract the offence of cheating as defined under Section 415 of I.P.C. and prayed to quash the proceedings.

Respondents – defacto complainants filed different complaints to take cognizance of the case against the petitioners for the offences punishable under Sections, 406, 420, 423 and 506 of I.P.C. and to direct the petitioners to pay compensation of Rs.30,00,000/-.

On bare perusal of the complaints, it shows that no specific averments were made that at time of time of execution of respective sale deeds, the petitioners induced the respondents – defacto complainants with dishonest intention to part with any amount and in the absence of such allegations the petitioners cannot be proceeded with for the offences punishable under Sections 406, 417 and 420 of I.P.C.

During hearing, Sri Vedula Srinivas, learned counsel for the petitioners reiterated those contentions. Moreover, Sri G.Venkata Reddy, learned counsel for the defacto complainants opposed the petition. On the other hand, the Magistrate failed to take cognizance of the case under Section 506 of I.P.C. and committed an error.

As seen from the allegations made in the complaint that the respondents – defacto complainants viz., Sirupa Venkata Rameshwar Reddy, Y.B.Bhaskara Reddy, Hari Prasad Reddy, Ashok Kumar Reddy and Sunil Kumar Reddy purchased vacant land under respective registered sale deeds dated 28.07.1993 from the petitioners herein. There is a specific recital in the sale deeds that “if any dispute arises in future over the schedule property from the date of execution of sale deed, the petitioners/accused would settle the disputes at their own expenses to perfect title of the complainants and others."

This condition is only an indemnity clause and the purchasers are entitled to claim such right under Section 55 of Transfer of Property Act. Mere agreeing to indemnify any loss caused to the purchasers itself would not amount to any offence. Moreover, it is the case of the respondents – defacto complainants that the land purchased by the complainants includes land of an extent of Ac.0.35 cents belonging to the Government and the balance is only Ac.0.21 cents and on account of the indemnity clause in the sale deeds, the petitioners are liable to pay compensation when the complainants lost Ac.0.35 cents on account of demolition of compound wall and taking possession by the Government, as there is indemnity clause, the petitioners committed the offences referred above. The entire complaint is bereft of any allegation that the petitioners or their vendors fraudulently induced the respondents – defacto complainants to purchase the property to an extent of Ac.0.58 cents despite knowledge that Ac.0.35 cents covered by the sale deeds is Government land, that apart the recitals in the sale deeds are clear that the transaction was entered into with free consent, hence in the absence of such allegation the complaint for the offence punishable under Section 420 of I.P.C. is not maintainable.

Learned counsel for the petitioners Sri Vedula Srinivas drawn the attention of this court to the judgments rendered by the Apex Court in "***M/s Thermax Ltd. v. K.M.Johny***[1]" "***Vesa***

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[1] 2011 AIR SCW 5952

***Holdings Private Limited v. State of Kerala***[2]"and "***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) v. Nimra Cerglass Technics Private Limited***[3]". In all the three judgments, the Apex Court consistently held that mere breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception.

Purchase of property is an voluntary act of both the vendor and vendee and when the vendor agreed to indemnify the loss and committed breach to indemnify such loss sustained by the purchasers – defacto complainants on account of taking possession of Ac.0.35 cents covered by the sale deeds would give raise to civil liability, since it amounts to breach of indemnity clause.

the Apex Court in "***Anil Mahajan v. Bhor Industries***[4]", where the parties entered into Memorandum of Understanding for supply of steel grip tapes stipulating that 50% of the payments against monthly quantity would be given in advance and balance 50% on receipt of the goods in pursuance of the Memorandum of Understanding, the complainant delivered. In the said case, the complainant delivered 56,94,120 reels of steel grip tapes valued at Rs. 3,38,62,860 to the accused during the period 19-8-2000 to 20-11-2000 and out of this amount, the accused made only part payment of Rs. 3,05,39,086 leaving balance amount of Rs. 33,23,774. The accused did not make further payment despite

[2] (2015) 8 SCC 293
[3] (2016) 1 SCC 348
[4] 2005 (10) SCC 228

repeated demands and started giving reasons such as cash flow problems, non-receipt of right type of colour assortment and sales tax problems, etc., besides raising disputes in respect of the material purchased six years back being defective. Based on the contents of the Memorandum of Understanding, the company filed a complaint against the petitioner for the offences punishable under Sections 415, 418 & 420 I.P.C and the Court took cognizance of it and the same is challenged before the Court.

In paragraphs 6,7 & 8 of the said judgment, the Court held as under:

> "Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.
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> 7. The order of the learned Additional Sessions Judge has been set aside by the High Court by the impugned judgment. The High Court, except noticing that the ratio of the judgment of this Court cannot be applied to all cases in a uniform way, has neither discussed the said judgment nor stated as to how it was wrongly applied by the learned Additional Sessions Judge. There is hardly any discussion in the impugned judgment for reversing a well-considered judgment of the learned Additional Sessions Judge.
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> 8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defense of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in

question.

In "***Anil Mahajan v. Bhor Industries***" (referred above) the Apex Court held that breach of contract would give raise to civil liability and not criminal prosecution is maintainable against such person.

Here, even assuming for a moment what the defacto complainants contended in the complaints is true, such failure of the petitioners, at best, would amount to breach of contract i.e. contract of indemnity in view of indemnity clause in the sale deeds, but the same would not give raise to any criminal liability as there was no fraudulent or dishonest intention at the beginning of the transaction. Even the terms of the sale deeds indicates that the sale deeds were executed out of free volition, thereby the allegations made in the complaint, *prima facie*, would not constitute any offence punishable under Sections 406, 417 and 420 of I.P.C. As the Magistrate took cognizance of the offences punishable under Sections 406, 417 and 420 read with 34 of I.P.C. only, the question of continuing proceedings for the offence punishable under Sections 506 I.P.C. does not arise since the Magistrate did not take cognizance for the offence punishable under Section 506 of I.P.C. and the defacto complainants did not question the action of the Magistrate in not taking cognizance for the offence under Section 506 of I.P.C. and now it is not open to the respondents – defacto complainants to contend that there is material against the petitioners for the offence punishable under Section 506 of I.P.C.

This Court can exercise inherent power under Section 482 of

Cr.P.C. to make orders as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

The Apex Court in "**State of Haryana v. Bhajan Lal**[5]**"** laid down seven guidelines. According to guideline No.1 where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In view of the guidelines issued by the Apex Court in "**State of Haryana v. Bhajan Lal"** (referred supra) it is difficult to accept the contention of the respondents that the petitioners can be proceeded with for the offence punishable under Section 506 of I.P.C.

Learned counsel for the respondents – defacto complainants drawn the attention of this Court to the judgments of Apex Court rendered in "***K.Neelaveni v. State***[6]" and "***Arun Bhandari v. State of Uttar Pradesh***[7]". In "***K.Neelaveni v. State"*** (referred supra) the Apex Court held that "it has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the first information report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of marriage were gone into or not is a matter of trial."

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[5] 1992 Supp. (1) SCC 335
[6] (2010) 11 SCC 607
[7] (2013) 2 SCC 801

Similarly, in "***Arun Bhandari v. State of Uttar Pradesh***" (referred supra) also the Apex Court reiterated the same principle.

On the strength of the said two judgments (referred supra) the learned counsel for the respondents – defacto complainants requested this Court to look into the material collected during investigation and documents filed along with the complaint. The law declared by the Apex Court in ***K.Neelaveni v. State*"** (referred supra) and "***Arun Bhandari v. State of Uttar Pradesh***" (referred supra) is not in quarrel, but the alleged breach of indemnity clause, at best, amount to breach of contract which would give raise to Civil liability and more particularly in the absence of any allegations to show that the petitioners fraudulently or dishonestly induced the respondents – defacto complainants, the present proceedings cannot be continued.

In ***State of Karnataka*** v. ***L. Muniswamy and Ors.***[8], the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

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[8] AIR 1977 SC 1489

In the said judgment, the Apex Court highlighted the powers of the High Court under Section 482 of Cr.P.C. and when such power can be exercised and concluded that when the proceedings initiated as an abuse of process of the Court, the Court can exercise such power to quash the proceedings.

In view of the law declared by the Apex Court in the judgments referred above and considering facts and circumstances of the case, at best, breach of indemnity clause would give raise to a Civil liability as there is nothing to show that the petitioners induced the respondents – defacto complainants with fraudulent or dishonest intention at the beginning i.e. on the date of purchase of property under registered sale deeds. Consequently, filing of such proceedings is nothing but abuse of process of the Court. Moreover, I find no ground to proceed further against the petitioners for the offences referred above. Consequently, the petitions are liable to be allowed.

In the result, the petitions are allowed and the proceedings against the petitioners herein in C.C.Nos. 31 of 2013, 32 of 2013, 30 of 2013, 33 of 2013 and 34 of 2013 respectively on the file of Special Judicial Magistrate of First Class – cum – Prohibition and Excise Court, Kurnool, are hereby quashed.

Consequently, miscellaneous applications pending if any, shall also stand closed.

**JUSTICE M. SATYANARAYANA MURTHY**

08.02.2017
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