

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 17219 OF 2016

ORDER :

This Criminal Petition is filed by the petitioner who is accused in C.C.No.1217 of 2015 on the file of the II Addl.Judicial Magistrate of First Class, at Bhimavaram, registered in Cr.No.256 of 2015 for the offence u/sec.420 IPC, on the complaint of the defacto complainant- 2nd respondent herein, seeking to quash the proceedings in the above Calendar Case with the grounds in the petition that the entire contents in the chargesheet does not constitute offence u/sec.420 IPC, that the 2nd respondent and her husband approached the petitioner, who is a Civil Engineer and having much experience as builder in construction field, and asked to construct a house for them and entered into an agreement with the petitioner on 13.02.2015 and entrusted the work to the petitioner, that the agreement contains the terms that the petitioner to construct G+1 building together with compound wall with the amount of Rs.29,50,000/- within 6 to 8 months, that out of the amount supra, the 2nd respondent paid an amount of Rs.22,25,000/- only and the petitioner completed 85% of the construction work, it is further averred that there is a civil dispute between the petitioner and the 2nd respondent and the chargesheet is nothing but abuse of process of law with criminal flavour to a civil dispute, hence to quash the proceedings in C.C.No.1217 of 2015.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the 1st respondent-State and there is no

representation for the 2nd respondent though served sufficiently and perused the material on record including the expressions submitted by the learned counsel for the petitioner in support of his case viz; **Bheemudu Narasimha Knniyappan Vs. State of A.P. rep. by Sub Inspector of Police, Jangareddigudem Police Station, West Godavari District¹** and the expression of the Apex Court in **Vesa Holdings (P)Ltd. Vs. State of Kerala²**.

The charge sheet filed is for the offence punishable under Section 420IPC against the petitioner as sole accused. It is outcome of the private complaint of the 2nd respondent. Even from the very First Information Report of the defacto-complainant including her statement during investigation, An agreement dt.13.02.2015 for the construction was executed between them of G+1 building with compound for a total sum of Rs.29,50,000/- to build in the vacant site with the specifications mentioned therein and time schedule for completion with payment schedule. In fact, even from the very complaint and statement of the defacto-complainant among other witnesses, it shows that the accused started the construction and did construction work. What is stated in the report registered as FIR by the defato-complainant including during investigation that the accused left some work without completion though took the amount more than entitled and the agreement speaks the construction made upto 05.08.2015 and so far as the left over work concerned, it is the

¹ (2006) 2 ALT(Crl) 108(A.P.)

² (2015) 8 SCC 293

avermment that he was threatening them and was postponing and avoiding to complete the work and ultimately challenged to do what she could, thereby to take action.

In fact, there is nothing even to say from the time entered into the contract the accused got guilty mind or fraudulent or dishonest intention to deceive. It is not even a case of he collected entire amount and failed to do the work. The expression of the Apex Court **Vesa Holdings (P)Ltd.** supra clearly speaks that when the culpable intention at the time of contract or initial a promise is absent in the time bound consultancy the contract between the parties, there is no offence of cheating that could be made out and for that conclusion, the Apex Court referred the earlier expressions in **Uma Shankar Gopalika Vs. State of Bihar**³, **All Cargo Movers (India) Private Limited Vs. Dhanesh Badarmal Jain**⁴ and **V.Y. Jose Vs. State of Gujarat**⁵ and these expressions in one line say that there must be deception from the inception and in the absence of which the offence under Section 420IPC has no attraction.

Having regard to the above, the Criminal Petition is allowed by quashing the proceedings in C.C.No.1217 of 2015 on the file of the II Addl.Judicial Magistrate of First Class, at Bhimavaram, as the cognizance taken by the learned Magistrate is unsustainable for no offence u/sec.420IPC is made out. The petitioner/accused is acquitted and the bail bonds of the petitioner/accused shall stand cancelled.

³ (2005) 10 SCC 336

⁴ (2007) 14 SCC 776

⁵ (2009)3 SCC 78

Consequently, pending miscellaneous petitions in this Criminal
Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2017
vvr

