

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.4757 of 2011

ORDER :

The petitioners, who are arrayed as accused Nos.1 and 2 in C.C.No.133 of 2008 on the file of the Additional Judicial First Class Magistrate, Bobbili, filed this petition under Section 482 of Cr.P.C. seeking to call for the records relating to C.C.No.133 of 2008 and quash the proceedings thereon.

The contention of petitioners is that they have purchased the scheduled property under a registered sale deed dated 31.3.2004 from the 2nd respondent as it fell to his share in the partition among the family members. The petitioners are inducted into possession on the same day and they never cheated the 2nd respondent.

Whereas, the 2nd respondent contended that he has no necessity to sell the property and petitioners misrepresenting that they are purchasing the land from his villagers requested him to sign as an attester to the said document before the Sub-Registrar and took him to the Sub-Registrar's Office and obtained his signatures and at the time of obtaining the sale deed, petitioners have an intention to cheat him.

In the complaint there is a specific allegation that the 2nd respondent is the owner of the dry land measuring about Ac.1.00 covered by patta No.203 and S.No.186/1 of Rangampeta Village. The

complaint filed by the 2nd respondent was forwarded under Section 156(3) of Cr.P.C. for investigation. The Police, after completion of investigation, filed a final report referring the case as false. Aggrieved by the same, the 2nd respondent filed the protest petition for the offence punishable under Section 420 I.P.C. The specific allegation in the complaint is that petitioners took the 2nd respondent to Sub-Registrar's office saying that he is required to put signature as an attesor on the document under which they are going to purchase the property. Believing their words, the 2nd respondent signed on the said document as an attesor, but he never executed the disputed sale deed dated 31.3.2004.

Section 420 of the Indian Penal Code reads as follows :

420. Cheating and dishonestly inducing delivery of property.—
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A reading of the Section 420 I.P.C. goes to suggest that there must be dishonest intention from the very beginning which is *sine qua non* to hold the accused guilty for commission of the offence. Further, for establishing an offence of cheating, there must be inducement to sign on the document, which he otherwise would not have done.

In the present case there is an allegation that the 2nd respondent has no necessity to sell the land to anybody much less to petitioners. The petitioners with an intention to grab the land played fraud in furtherance of their common object and represented that they are purchasing the land from the villagers of the 2nd respondent and requested him to sign as an attester in the said document before the Sub-Registrar in the month of March, 2004. The 2nd respondent believing the words of petitioners came along with petitioners and vendors of the land to the Sub-Registrar's office, Bobbili on 31.3.2004 and put signatures on the document as desired by petitioners, which shows there is specific allegation that at the inception of obtaining signatures of the 2nd respondent by petitioners, there is an inducement of the 2nd respondent to sign on the disputed sale deed dated 31.3.2004 which he generally would not sign. Since the complaint was referred as false, the 2nd respondent is constrained to file a protest petition basing on which the Court took the case on file for the offence punishable under Section 420 of I.P.C.

There is *prima facie* material to prosecute petitioners. Absolutely there is no abuse of process of law or miscarriage of justice. I do not find sufficient ground to quash the proceedings in C.C.No.133 of 2008 on the file of the Additional Judicial First Class Magistrate, Bobbili.

In the result, the Criminal Petition is dismissed while vacating the interim stay granted by this Court in CrI.M.P. No.4824 of 2011, dated 29.6.2011.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

26th October, 2017

skmr

