THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.14957 OF 2016

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.208 of 2016 on the file of Kodad Town Police Station, Nalgonda District, for the offences punishable under Sections 420 & 506 IPC, registered on the basis of the complaint lodged by the second respondent-Karalapati Papa Rao.

The case of the respondent in brief is that he purchased a house site plot of an extent of 348 sq.yds from one Voruganti Narayana Rao on 28.11.2014 for Rs.49,50,000/-. The respondent paid a total amount of 49,50,000/- on different dates under the agreement to the first accused, but, he could not obtain registered sale deed immediately. Due to intervention of elders, the second respondent agreed to pay Rs.5,00,000/- in addition to the amount agreed to be paid i.e. Rs.49,50,000/-. Thus, he totally paid an amount of Rs.54,50,000/-.

As the first accused was avoiding to execute registered sale deed, on suspicion, the second respondent enquired with the Registrar's office and found that the first accused executed a mortgage deed in favour of the petitioner herein/A-2. When the second respondent questioned, the first accused warned him with dire consequences and threatened to kill the second respondent herein. On the strength of the same, crime was registered and F.I.R was issued.

The main contention of the learned counsel for the petitioner/A-2 is that the petitioner herein is not the wife of Voruganti Narayana Rao/A-1, who allegedly mortgaged and executed agreement of sale in favour of the second respondent and allegedly received Rs.49,50,000/- on various dates, while agreeing to sell it, as and when he paid the balance sale consideration. The transaction between the petitioner and Voruganti Narayana Rao/ A-1 is only contractual obligation, which is purely civil in nature. The execution or creation of any mortgage in favour of his wife or the petitioner herein would constitute an offence, is a question to be decided in this matter. The police registered a crime for the offence punishable under Section 420 IPC.

Section 420 IPC deals with cheating and dishonestly inducing delivery of property. According to it, 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 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.

But, the word ‘Cheating’ is defined under Section 415 IPC and according to it, whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

In view of definition of 'cheating' under Section 415 IPC, to constitute an offence under Section 420 IPC, there must be cheating, coupled with dishonest inducement for delivery of the 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 valuable security.

Here, Voruganti Narayana Rao/A-1 allegedly executed agreement of sale dated on 28.11.2014 and received substantial amount as advance sale consideration i.e. Rs.49,50,000/- on various dates. But, Voruganti Narayana Rao/A-1, allegedly created a mortgage in favour of the petitioner herein, but he did not disclose the date of creation of such mortgage whether it is prior or subsequent to the agreement of sale dated 28.11.2014. At the same time, it is not known whether Voruganti Narayana Rao/A-1 had any intention to cheat or induce any person to part with the property at the inception of the transaction i.e. execution of agreement of sale.

In ***V.Y.Jose v. State of Gujarat***[1] the Apex Court laid down following ingredients to constitute cheating.

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> (i) deception of a person either by making a false or misleading representation or by other action or omission;

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[1] (2009) 3 SCC 78

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown to exist at the beginning of the transaction, i.e., the time when the offence is said to have been committed.

Keeping in mind the requirements to constitute an offence punishable under Section 420 IPC, I would like to examine the allegations made in the complaint.

The allegations made in the complaint did not disclose anything as to the date of creation of any mortgage, including document number, except making a bald allegation and it is not known whether it is subsequent to the agreement of sale dated 28.11.2014. It is also clear from the allegations made in the petition that the petitioner herein is the daughter of Rangayya, but not the wife of Voruganti Narayana Rao/A-1, aged 37 years, living by tailoring profession. But, at this stage, it is difficult to decide whether she is the wife of Voruganti Narayana Rao/A-1 or not. However, the allegations made in the complaint are purely civil in nature. In case, Voruganti Narayana Rao/A-1 fails to register the sale deed, discharging the encumbrance over the property, the remedy open to him against the first accused is to enforce the terms of agreement by resorting to file a suit for specific performance. But, the person who obtained mortgaged, even if, it is true is not liable for prosecution, since the second respondent did not dishonestly induced second respondent to deliver property. Therefore, prima facie, the petitioner is not liable for punishment for the offences referred supra, as per the material available on record.

The other offence allegedly committed by the petitioner is punishable under Section 506 IPC. But, as seen from the allegations made in the complaint, it is evident that the Voruganti Narayana Rao/A-1 allegedly threatened the second respondent to kill him, but not the petitioner. Therefore, the allegations made in the complaint would not constitute an offence punishable under Section 506 IPC. Hence, I find no material to proceed against this petitioner punishable under Section 420 & 506 IPC and proceedings are hereby quashed.

In **State of Haryana** v. **Bhajan Lal**[2] this Court considered in detail the provisions of Section 482 and the power of the High

[2] 1992 Supp. (1) SCC 335

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:

> (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 or make out a case against the accused.
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> (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.
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> (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.
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> (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.
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> (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.
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> (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.

Even if the guidelines laid down by the Apex Court are applied to the present facts, when the allegations made in the complaint or report did not disclose commission of any offence, the Court can exercise its inherent power and quash the proceedings. Therefore, keeping in mind the guidelines issued by the Apex Court in the judgment referred supra and considering the material available on record, I find it is a fit case to quash the proceedings. Accordingly, the proceedings in Crime No.208 of 2016 on the file of Kodad Town Police Station, Nalgonda District, against the petitioner are hereby quashed.

In the result, this criminal petition is allowed.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.11.2017

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