

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.11417 OF 2015

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') to quash the proceedings in Calendar Case No.420 of 2015, on the file of the Judicial Magistrate of First Class, Sircilla, along with the endorsement of the Court on docket sheet.

2. The petitioner, who is accused No.2 in the aforesaid Calendar Case, alleged to have committed the offences punishable under Sections 420 and 406 IPC, along with accused No.1.

3. Heard Sri V.V. Ramana Rao, learned counsel for the petitioner, who pleads innocence and false implication of the petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

4. Having referred the allegations in the complaint, he would submit that the *de facto* complainant set out the allegations so as to convert the case of a civil nature to that of a criminal action; in fact, the *de facto* complainant paid a sum of Rs.4,00,001/- as advance and has to pay a balance amount on or before 03.01.2011, but failed to perform his part of obligation and even failed to give a legal notice if there is any truth in the stand that he was always ready and willing to perform his part of contract; the *de facto* complainant agreed to

purchase 300 square yards of land at the rate of Rs.5,050/- per square yard for a total sale consideration of Rs.15,15,000/-, which require Rs.1,25,000/- towards stamp duty and registration charges; but, even according to the allegation of the *de facto* complainant, he deposited a sum of Rs.53,985/- on 29.04.2011 in State Bank of Hyderabad, Sircilla Branch towards stamp duty and registration charges, which itself would belie the case of the *de facto* complainant; the alleged payment of Rs.2,00,000/- on 21.01.2011 is not evidenced by any receipt; the *de facto* complainant kept silent for more than four and a half years, filed a false case and, therefore, sought to quash the criminal proceedings in the aforesaid calendar case as the prosecution of petitioner would amount to abuse of the process of law.

5. The learned Additional Public Prosecutor resists the request. According to him, the allegations in the complaint and the statements recorded by the police would make out *prima facie* allegations even at this stage to substantiate the offences alleged against the petitioner and, therefore, sought to reject the request.

6. The fact-situation reveals that accused Nos.1 and 2 executed an agreement of sale on 03.12.2010 having received Rs.4,00,001/- towards advance amount and agreed to receive balance amount on or before 03.01.2011 stating that they have purchased the land from Pathipaka Goverdhan, Pathipaka Nirmala, Pathipaka Prashanth, Pathipaka Nagaraju, Pathipaka Yashwanth and Pathipaka Ashok, and

that the said Vendors would directly execute a registered sale deed in favour of the *de facto* complainant, and that at the relevant time, the other witnesses, whom they have cited as LWs.2 to 4, were present and LW.5 scribed the document and LWs.2 and 3 attested the agreement; according to the *de facto* complainant, he paid Rs.2,00,000/- to accused No.1 on 21.01.2011 towards part of sale consideration and both the accused advised him to prepare a draft registered sale deed by paying stamp duty and registration charges and, accordingly, he deposited a sum of Rs.53,985/- in State Bank of Hyderabad, Sircilla Branch on 29.04.2011 towards stamp duty and registration charges; and when he demanded several times, both the accused postponed to execute a registered sale deed and with a dishonest and fraudulent intention, they are trying to sell the said land to others to make wrongful gain for themselves, and thereby they deceived and cheated the *de facto* complainant. The *de facto* complainant also alleges that on 28.04.2015 at 11.00 a.m., when he along with LWs.2 to 4 went to the house of accused No.1, where accused No.2 was also present, and when he asked them to execute a registered sale deed in his favour, they got angry and started abusing him in filthy language using abusive phrases and threatened him with dire consequences, in case he demands for registration of land, on which LW.4 rescued the *de facto* complainant from the clutches of the accused when they tried to assault him and, thus, accused No1 and the

petitioner, who is accused No.2, dishonestly and fraudulently not registered the land and made him to part with Rs.6,00,001/-.

7. The calendar case relates to the year 2015. The petitioner, except filing copies of charge sheet, so-called agreement of sale, receipt and other documents, has not submitted any statements of the witnesses. He also filed a copy of challan evidencing the payment of Rs.53,985/- by the *de facto* complainant. When the proceedings in calendar case are sought to be quashed, primary duty of the petitioner is to submit all relevant papers i.e., statements of the witnesses recorded under Section 161 of the Code, which constitute material containing the allegations touching the complicity of the petitioner, which the petitioner did not do. The complaint averments cannot be ruled out and even they would constitute *prima facie* allegations in the direction of substantiating the offences punishable under Sections 420 and 406 IPC. Moreover, it cannot be said that prosecution of the petitioner in the aforesaid calendar case would amount to abuse of the process of law.

8. The learned counsel also placed reliance on a decision of the Hon'ble Supreme Court in **Dalip Kaur and others v. Jagnar Singh and another**¹, as to the ingredients of cheating and fraudulent and dishonest intention must exist from the very inception when the promise or representation was made, and non-refunding of amount of

¹. (2009) 14 SCC 696

advance results in simply a breach of contract and does not constitute cheating or criminal breach of trust. For the reasons that statements recorded under Section 161 of the Code are not filed by the petitioner and the dishonest intention or deception from inception can be gathered only when the witnesses are examined. Therefore, it is difficult to accede to the request of the petitioner to quash the proceedings at this stage.

Accordingly, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

March 28, 2017.
Mgr

