

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4077 OF 2010

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against the petitioner in C.C.No.277 of 2008 on the file of the Judicial First Class Magistrate,, Puttur, Chittoor District, for the offences punishable under Section 468 and 420 of Indian Penal Code (for short "I.P.C.").

Respondent No.2 filed a private complaint under Section 200 of Cr.P.C. before the Judicial First Class Magistrate, Puttur alleging that the petitioner herein made a false representation and induced him to purchase the property under an agreement of sale for Rs.6,27,000/- without having any title over the property by the date of agreement of sale dated 19.02.2008 and made him to part with an amount of Rs.25,000/- on the date of execution of agreement as advance and agreed to pay balance amount within specified time in installments as agreed, and the respondent No.2 paid Rs.75,000/- as 1st installment on 01.03.2008 while agreeing to pay balance amount of Rs.5,27,000/- before 18.05.2008.

It is the contention of the respondent No.2 before the concerned Magistrate that by the date of execution of the agreement the suit was pending between the petitioner and 3rd party with regard to the same property, but without disclosing the pendency of the suit, the petitioner herein made the respondent No.2 to part with huge amount and the respondent

No.2 entered into agreement for purchase of immovable property for Rs.6,27,000/- . The Magistrate instead of proceeding under Section 200 of Cr.P.C. referred the complaint under Section 156 (3) Cr.P.C. and after due investigation police filed the charge sheet against the petitioner for the offences referred above.

Now the contention before this Court is that Sri Sabhan Khan filed a suit O.S.No.50 of 2002 for specific performance of agreement of sale dated 15.07.1993 against S.Ghouse Maiddin Saheb @ Pulluru Saheb, the petitioner herein. Undisputedly, by the date of obtaining agreement of sale by the respondent No.2 herein in the year 2008, the suit was pending, but the petitioner denied the very execution of agreement of sale. Therefore, the petitioner did not commit any offence.

This Court ordered notice to the respondent No.2 and Sri Masthan Naidu Cherukuri appeared earlier and later reported no instruction. Therefore, fresh notice was ordered to the respondent No.2 and again served notice by the learned counsel for the petitioner and filed proof of service. Despite service of notice, neither respondent No.2 nor anybody on his behalf appeared before this Court to defend the present petition.

Undisputedly, the respondent No.2 entered into agreement to purchase the property and paid Rs.1,00,000/- totally on two occasions i.e. Rs.25,000/- on the date of agreement of the agreement dated 19.02.2008 and Rs.75,000/- on 01.03.2008 while agreeing to pay the balance amount of Rs.5,27,000/- before 18.05.2008, but the contention of the respondent No.2 before the trial Court is that the petitioner did not disclose the

pendency of O.S.No.50 of 2002 before the Principal Junior Civil Judge, Puttur and made the respondent No.2 to believe that the property is free from disputes and made him to part with huge amount.

During hearing, learned counsel for the petitioner produced a copy of the judgment in O.S.No.50 of 2002 passed by the Principal Junior Civil Judge, Puttur filed for specific performance and in paragraph Nos.21 and 22 of the judgment, the Court recorded a specific finding that the agreement of sale sued upon by the plaintiff therein is a forged document and declined to pass a decree in his favour and that apart by the date of alleged execution of agreement of sale, the petitioner herein was not the owner of the property, thereby dismissed the suit. Even according to the petitioner, by the date of alleged agreement, which is subject matter of O.S.No.50 of 2002 on the file of Principal Junior Civil Judge, the petitioner was not the owner of the property, he was only purchaser under agreement of sale, but later obtained regular registered sale deed from his vendor on 25.04.2001 and became owner of the property by obtaining registered sale deed in execution of decree in a suit for specific performance i.e. O.S.No.5 of 1997. Therefore, non-disclosure of pendency of the suit in O.S.No.50 of 2002 on the file of Principal Junior Civil Judge, Puttur, which ended in dismissal does not amount to cheating and fraudulent inducement of respondent No.2 to part with any property since the petitioner did not make any inducement and the agreement is voluntarily in view of the recitals made therein. The

allegations made in the complaint would not satisfy the ingredients of Section 415 of I.P.C. besides dishonest inducement to deliver any property to punish the petitioner for the offence under Section 420 of I.P.C.

Section 468 of I.P.C. deals with forgery for purpose of cheating. The word forgery is defined in Section 463 of I.P.C. Section 463 of I.P.C. reads as follows:

463. Forgery:- Whoever makes any false document or false electronic record or part of a document, or electronic record with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause by person to apart with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery.

Here, the petitioner admittedly executed agreement of sale dated 19.02.2008 after he became owner of the property by virtue of sale deed obtained in execution of decree of specific performance in O.S.No.5 of 1997. Thus, the question of forgery does not arise in view of the clear admission made by the respondent No.2 in the complaint regarding execution of agreement of sale and obtaining sale deed through process of Court in execution of decree for specific performance.

The allegations made in the complaint, on their face value would not constitute an offence under Sections 420 of 468 of I.P.C.

The Apex Court in “**State of Haryana v. Bhajan Lal**”¹ laid down certain guidelines to exercise jurisdiction under

¹ 1992 Supp. (1) SCC 3352

Section 482 of Cr.P.C. According to guideline No.1 the High Court can exercise its inherent power to quash the criminal complaint 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.

In “***State of Karnataka v. L. Muniswamy***”², 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.”

² AIR 1977 SC 1489

In view of my foregoing discussion and also the guideline No.1 indicated in “***State of Haryana v. Bhajan Lal***” (referred supra), I find that it is a fit case to quash the proceedings since the allegations made in the complaint, on their face value, prima facie would not constitute any offence punishable under Section 420 and 468 of I.P.C.

In the result, the petition is allowed and the proceedings in C.C.No.277 of 2008 on the file of the Judicial First Class Magistrate, Puttur, Chittoor District, registered against the petitioner are hereby quashed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

20.01.2017
Ksp

JUSTICE M. SATYANARAYANA MURTHY

