

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.9271 of 2010

ORDER:

The petitioners are accused Nos.1 and 2 of C.C. No.88 of 2010 on the file of I Additional Judicial Magistrate of First Class, Kadapa, Kadapa District. It is the private complaint of the 2nd respondent—defacto complainant filed on 21.08.2009 enclosing copy of the sale agreement dated 08.09.2005 executed by Accused No.1 in favour of Accused No.2 and the learned Magistrate referred the same to the Police, Kadapa II Town Police Station, Kadapa for investigation under Section 156 (3) Cr.P.C, for which the police registered a case in crime No.148 of 2009 for the offences punishable under Section 420 IPC against the two accused and after investigation filed the final report on 28.01.2010 by citing LW.1—defacto complainant and her husband LW.2, the scribe and two other persons said to have been present at the time of so-called execution of agreement—LWs.3 to 5 and for the demands against refusal to register the sale deed by the defacto complainant and the Branch manager of Union Bank of India—LW.6 to speak about A.1 mortgaged the property by depositing the title deeds with the bank and committed default in payment of the amount and before the release of the documents from the bank by payment executed gift in favour of accused No.2. LW.7 is the Joint Sub-Registrar-I, Kadapa from whom certified copy of gift deed dated 28.05.2009 obtained by Investigating Officer—LW.8. The learned Magistrate has taken cognizance therefrom. It is the same now impugned in the quash petition.

2) The contents in the grounds urged in the quash petition are that entire allegations levelled against the petitioners, even taken on face value, the offence no way attracts the ingredients under Section 420 IPC and taking of cognizance by the learned Magistrate is unsustainable and it is purely a civil dispute, thereby the calendar case proceedings are liable to be quashed.

3) Heard learned counsel for the petitioner and also learned Public Prosecutor representing the 1st respondent—State. Even though notice served on the 2nd respondent, failed to attend, hence taken as heard and perused the material on record.

4) There is no part-II CD filed, undisputedly, but for the police final report in the form of charge sheet and the same was registered as C.C.

5) From the private complaint reproduced in the form of charge sheet practically shown that Accused No.1 entered into an agreement of sale on 08.09.2005 with the complainant in respect of house bearing No.D.No.20/9(2) of Akula Street, Kadapa, in which he got title as fallen to his share vide partition deed document No.4743 of 2000, dated 20.09.2000 and having agreed to sell for Rs.10,00,000/- received Rs.30,000/- as advance from the complainant. As can be seen from the agreement terms, it is stipulated to register the property on or before 08.07.2006 by receiving balance sale consideration of Rs.9,70,000/-. Further on 26.04.2006, the complainant paid Rs.45,000/- to Accused No.1 towards balance sale consideration and the same was endorsed on the backside of the agreement, to which wife of Accused No.1—Meena devi signed as witness and accused extended the time to

08.10.2016 for registering the property and complainant having came to know that the property was mortgaged with the bank by the accused and he paid Rs.10,000/- on 08.10.2006 which was acknowledged by accused on the back of the agreement in the presence of one S.Safiulla Basha mentioning that after bank settlement within ninety days to register the 1st floor. It is alleged that believing the same, complainant waited for registration though he is ready and willing to pay the balance sale consideration, however to his surprise, he came to know that Accused No.1 released the document of the property from the bank on 08.06.2009 itself and executed registered gift deed in favour of his wife—Accused No.2 even before that on 28.05.2009 vide registered document No.2031 of 2009 and accused Nos.1 and 2 knowingly that already there is an agreement of sale entered by accused No.1 in favour of the complaint on 08.09.2005 and having executed the sale agreement and without registration by release of the bank mortgage and in the meantime, executed the gift deed in favour of accused No.2 is nothing but cheating.

6) The police final report speaks the self same facts and thereby, the accused are liable for the offence of cheating.

7) Undisputedly, there was a sale agreement dated 08.09.2005 executed by Accused No.1 in favour of the complainant for Rs.10,00,00/- of the house property and what paid as advance was only Rs.30,000/- on that date and it is stipulated to pay the balance and register a document by 08.07.2006 and in the meantime, paid Rs.45,000/- to accused No.1 and obtained endorsement saying time of performance stipulated by 08.07.2006,

which was subsequently extended to 08.10.2006 and with all these, there was an endorsement by accused No.1. It further discloses that the property is under bank mortgage and accused No.1 expressed his inability to register the property on 08.10.2006 saying it is under bank mortgage and received another Rs.10,000/- and endorsed on the backside by saying after settlement of bank loan within 90 days to register and it was not registered.

8) However, before release of the documents from the discharge of bank debt, Accused No.1 executed gift deed in favour of accused No.2. So far as the original sale agreement is concerned from execution of agreement and receiving of part payments till 08.10.2006, there is no offence of cheating to deceive much less from the inception but for to judge the conduct from the beginning from events subsequent to it, if any, from taking Rs.10,000/- further on 08.10.2006 to register the document within 90 days after settlement and taking original source of title deed with bank. No doubt, from execution of gift deed before liquidation of the bank mortgage debt by 1st accused in favour of his wife, the accused No.2, who was one of the attestors to the sale agreement part payments, it is to decide the allegations as to how far A2 can show lack of knowledge despite endorsement shown attested and on its genuineness as to same is as privy to the malicious intention on the part of Accused No.1.

9) The contention of learned counsel for petitioners/ Accused Nos.1 and 2 is that right from the inception of entering into sale agreement, there must be shown inception to deceive,

which is the pre-requisite for establishing the offence of cheating and same is lacking by relying upon the expressions of the Apex Court in **Uma Shankar Gopalika vs State of Bihar and another**¹, **Dalip Kaur and Others vs Jagnar Singh and another**², **V.Y.Jose and another vs State of Gujarat and another**³, **Binod Kumar and others vs State of Bihar and another**⁴, **V.P.Shrivastava vs Indian Explosives Limited and another**⁵ and **Nageshwar Prasad Singh Alias Sinha vs Narayan Singh and another**⁶ and of this Court in **Smt.Indu Dalmia and others vs State of A.P and another**⁷.

10) The facts discussed require no more repetition. A little change in facts till the result for these can be precedents of facts especially in criminal law. From the facts supra, it cannot be said that there is no basis at all and outcome of non-application of mind in taking cognizance by the learned Magistrate though not given reasons.

11) Having regard to the above, the cognizance taken by the learned Magistrate is no way shown sustainable or it is purely a civil dispute, but for to say the above observations no way influence the mind of trial Court in considering the material to decide the lis on merits.

12) Accordingly and in the result, the Criminal Petition is dismissed for nothing to quash the proceedings in C.C. No.88 of

¹ 2005 (10) SCC 336

² 2009 (14) SCC 696

³ 2009 (3) SCC 78

⁴ 2014 (10) SCC 663

⁵ (2010) 10 SCC 361

⁶ (1998) 5 SCC 694

⁷ 2016 (1) ALD (Crl) 659

2010 on the file of I Additional Judicial Magistrate of First Class, Kadapa, Kadapa District. Needless to say, if any application under Rule 37 of the Criminal Rules of Practice filed, the learned Magistrate shall permit one to represent the other with necessary conditions.

13) Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:19.09.2017
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