

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.9621 of 2011

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C., to quash the proceedings initiated against the petitioners/A.1 and A.2 in FIR.No.403 of 2010 of Karimnagar II Town Police Station, Karimnagar District, registered for the offences punishable under Sections 420, 406, 323 and 506 of IPC and Section 156(3) of Cr.P.C.

2. The brief facts of the case are that the 2nd respondent lodged a complaint under Section 200 Cr.P.C., against the petitioner Nos.1 and 2 alleging that they have committed offences stated supra. The Accused Nos.1 and 2 beat the 2nd respondent with hands and threatened her to kill, if she comes again about the land issue. Thereafter, the 2nd respondent has filed a private complaint dated 02.11.2010 under Section 200 Cr.P.C., before the learned Additional Judicial Magistrate of First Class, Karimnagar, against the petitioners/A.1 and A.2 and the learned Magistrate has referred the matter for investigation under Section 156(3) Cr.P.C., to II Town Police Station, Karimnagar District, and the police registered a case in FIR.No.403 of 2010 against the petitioners/A.1 and A.2 for the offences punishable under Sections 420, 406, 323 and 506 of IPC and Section 156(3) of

Cr.P.C. Aggrieved by the same, the present Criminal Petition is filed to quash the said FIR.

3. Heard the arguments of Sri L. Prabhakar Reddy, learned counsel for the petitioners/A.1 and A.2 and the learned Public Prosecutor appearing for 1st respondent-State. Though notice is served on respondent No.2 – defacto complainant, none appeared on her behalf. Perused the material on record.

4. Learned counsel for the petitioners contended that there is a delay in lodging the complaint under Section 200 Cr.P.C., and on this ground alone, the FIR is not maintainable. It is also contended that the 2nd respondent – complainant alleged to have obtained Agreement of Sale from the original owner – A. Dhanalaxmi on 26.03.2008 and under the said Agreement, a Sale Deed was registered on 25.06.2008 in her favour to an extent of Acs.6.02 guntas. The 2nd respondent – complainant had not taken any steps against the original owner for registration of the remaining extent of land in her favour, except filing a private complaint under Section 200 Cr.P.C., on 02.11.2010. It is further argued that the private complaint has been filed with a malafide intention only to harass the petitioners/A.1 and A.2 and it is nothing but abuse of the process of law and, therefore, sought for dismissal of the FIR.

5. Learned counsel for the petitioners would further contend that the ingredients of offences punishable under Sections 420, 406, 323 and 506 of IPC are not present in the

present case. It is submitted that A.2 and respondent No.2 are sisters and A.1 is the husband of A.2.

6. The learned Public Prosecutor submits that the ingredients of offences punishable under Sections 420, 406, 323 and 506 of IPC are very much present in this case and this is a clear case of cheating the 2nd respondent – defacto-complainant and, therefore, the petitioners are not entitled for quashing of the aforesaid FIR.

7. At the outset, the case of the petitioners/A.1 and A.2 is that the 2nd respondent – complainant has entered into an Agreement of Sale on 26.03.2008 with the original land owner – Akkenepalli Dhanalaxmi, w/o. Raviprasad to purchase agricultural land admeasuring Acs.12.04 guntas of Raikal Village and Mandal, for a total sale consideration of Rs.20.00 Lakhs. The petitioners with a malafide intention got executed separate registered Sale Deeds in respect of half of the land in favour of the 2nd respondent-complainant and the remaining half in favour of A.2 on 25.06.2008.

8. Learned counsel for the petitioners submits that ingredients of Section 420 IPC are not present in the instant case, as the petitioners have no intention to cheat the 2nd respondent from the inception. The contents of the FIR reveals that on the date of registration of the land, A.1 with an intention to play fraud on the complainant got registered only half of the land, out of total extent of Acs.12.04 guntas,

to which the 2nd respondent – complainant paid the entire sale consideration to the original owner – Akkenepalli Dhanalaxmi. From this it clear that A.1 has got intention to play fraud from the date of registration of the land, but not from the inception.

9. Learned counsel for the petitioners relied upon a decision of the Apex Court in UMA SHANKAR GOPALIKA v. STATE OF BIHAR¹, wherein at para-6, it was held as under:

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs.4,20,000/-, they would pay a sum of Rs.2,60,000/- to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs.4,20,000/-. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.”

Placing reliance on the above decision in UMA SHANKAR GOPALIKA's case (supra), learned counsel for the

¹ (2005) 10 Supreme Court Cases 336

petitioners submitted that every breach of contract would not give rise to an offence of cheating and in this case, the petitioners have no dishonest intention to cheat the 2nd respondent from the inception and if the intention to cheat has developed at a later stage, the same would not amount to cheating.

10. The contention of the learned counsel for petitioners by placing reliance on the aforesaid judgment cannot be countenanced for the reason that as per the allegations made by the 2nd respondent in the complaint, this is a case where the property was transferred in the name of A.2, at the instance of A.1. The 2nd respondent has clearly mentioned in the complaint that A.1 on the date of registration, with an intention to play fraud on the complainant, got registered only half of the land i.e., Acs.6.02 guntas, out of total extent of Acs.12.04 guntas, to which the 2nd respondent had paid the entire sale consideration to the original vendor. It is pertinent to note that the 2nd respondent had made allegation in the complaint that the petitioners had an intention to play fraud on the complainant to get half of the land registered, out of total extent of Acs.12.04 guntas, which attracts the provisions of offences punishable under Section 420 IPC. Therefore, the facts in the above decision are different from the facts of the present case, and hence the decision cited is not applicable to the facts of the present case.

11. Learned counsel for the petitioners submitted that there are latches in lodging complaint by respondent No.2. In support of his contention, the learned counsel placed reliance on a decision of the Apex Court in SURESH v. MAHADEVAPPA SHIVAPPA DANANNAVA² and submitted that for taking cognizance of an offence, latches are to be considered in filing the complaint.

12. Learned counsel would further submit that the dispute is purely of a civil nature and the 2nd respondent has got a remedy of filing a suit for specific performance of the Agreement of Sale against the original owner. Therefore, the private complaint against the petitioners, in the absence of any ingredients of the offences alleged is liable to be quashed.

13. As a matter of fact, the allegations in the FIR prima-facie show that the 2nd respondent entered into an Agreement of Sale with one Dhanalaxmi, the original owner to purchase agricultural land to an extent of Acs.12.04 guntas. Out of the said extent, the vendor had registered an extent of Acs.6.02 guntas of land in the name of A.2, whose husband was residing in Dubai. He came to India in the month of October, 2009. Thereafter, both respondent No.2 and her husband requested A.1 and A.2 several times either to register the remaining extent of land in the name of respondent No.2 or to return the sale consideration amount, which was already paid

² (2005) 3 Supreme Court Cases 670

to A.1 towards purchase of the entire extent of land. However, A.1 evaded to pay the same on one pretext or the other and finally, A.1 and A.2 stated that they are going to register the land in the name of 2nd respondent – complainant during the last week of October, 2010 and, therefore, they went to the house of the petitioners/A.1 and A.2 on 24.10.2010 and requested to register the remaining extent of land in the name of the 2nd respondent. However, A.1 and A.2 abused them in filthy language and beat the 2nd respondent with hands indiscriminately and also threatened to kill her, if she comes again with the said reason. Therefore, the 2nd respondent – complainant went to the SHO, Karimnagar II Town Police Station, to lodge a complaint, who directed her to approach the Court on the ground that the dispute pertains to a Civil nature and, therefore, the 2nd respondent – complainant lodged private complaint before the trial Court.

14. The allegations in the complaint would show that the ingredients of Sections with which the petitioners were charged are very much attracted in this case. No doubt, the 2nd respondent-complainant has got the remedy of filing a suit for specific performance of the Agreement of Sale dated 26.03.2008. But, in the peculiar facts and circumstances, since it is alleged that complainant believed Accused No.1 and sent monies to purchase the land, however, he got part of the land registered in the name of his wife. Therefore, this is not purely a case of civil in nature. Since there are specific

allegations against the petitioners for the offences alleged against them, there are no valid grounds or reasons to interfere with the investigation and the Criminal Petition is liable to be dismissed.

15. At this stage, learned counsel for the petitioners submits that petitioners/A.1 and A.2 are senior citizens and hence requested to issue directions to the police concerned to follow the procedure prescribed under Section 41-A of Cr.P.C., during investigation, in the light of the ratio laid down by the Hon'ble Apex Court in ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER³.

16. Considering the request of the learned counsel for the petitioners, the police are directed to follow the procedure prescribed under Section 41-A of Cr.P.C., during investigation.

17. With the above observations, this Criminal Petition is dismissed.

18. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

11.10.2017.
Msr

GUDISEVA SHYAM PRASAD, J

³ 2014 (8) SCALE 250

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11.10.2017
Msr