

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10180 OF 2015

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.319 of 2015 pending on the file of I Additional Judicial Magistrate of I Class, Tadepalligudem West Godavari District, for the offences punishable under Sections 420, 120(B), 471, 447 and 384 of I.P.C.

The respondents 2 & 3 filed a private complaint making an allegation that the petitioners/accused 1 & 3, who are father-in-law and wife of A-2, made the complainants to believe that the Daba House is free from all encumbrances. Further, after negotiations, the respondents 2 & 3 purchased the property for an amount of Rs.16,98,000/- got the property registered.

The main contention before this Court is that A-1 is no way concerned and he is only father-in-law of A-2 and he is not executant of the document. But, the allegations are otherwise, which show that A-1 & A-2 also executed the said document and received Rs.16,98,000/-. The Document allegedly executed by A-2 dated 24.01.2013 is produced before this Court and on perusal of the document dated 24.01.2013, it is clear that the document was executed by A-2 alone, but not by A-1. Therefore, the allegation made in the complaint at page 3 appears to be an invention to rope the petitioners with the offences, though he did not execute the document, such allegation is made.

So far as the offences with regard to A-2 are concerned, she allegedly telephoned the complainants and gave assurance to the complainants that nothing would happen even if the property is registered. Respondents 2 & 3 did not disclose the

date and other details of telephonic conversation and no material is available on record to show that she induced the respondent to part with huge amount of Rs.16,98,000/-. In a petition filed under Section 482 of Cr.P.C, the jurisdiction of this Court is limited and such power can be exercised sparingly in exceptional circumstances to implement the orders passed by this Court to prevent abuse of process of the Court and to meet the ends of justice. But, in the present case, a serious allegation of fraud is made against both the petitioners/A1- & A-3 respectively.

But, the allegations in the private complaint along with other material produced, on its face value, if accepted in its entirety, would not constitute offences punishable under Sections 420 & 420(B) of I.P.C, as there is nothing regarding inducement by A-1 & A-3, the petitioners herein to part with huge amount of Rs.16,98,000/- and to obtain registered sale deed dated 24.01.2015, in the absence of such allegations that at the time of execution of the document, they had any dishonest intention to induce the petitioners. In the absence of those allegations, it is difficult to hold that the petitioners are responsible for the offences punishable under Sections 420, 120(B), 471, 447 and 384 of I.P.C., merely because they are none other than father-in-law and wife of A-2 and they are implicated by abuse of process of Court. Moreover, in the statement recorded by the Court, there is no allegation to constitute offences punishable under Sections 420 & 120(B) of IPC, except referring their names about presence etcetera.

In ***State of Haryana v. Bhajan Lal***¹ this Court considered in detail the provisions of Section 482 and the power of the High 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.

(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.

(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.

(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.

(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.

(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.

It is clear that the criminal proceedings are initiated to wreak vengeance by abuse of process of the Court, as per

¹ 1992 Supp. (1) SCC 335

guideline nos.5 & 6 of **Bhajanlal** case, and they are liable to be quashed.

Even otherwise, according to guideline No.1 of **Bhajanlal** case, 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, the proceedings can be quashed. When charge sheet is filed, the Court is bound to confine to the allegations made in the complaint and not required to appreciate the evidence except for limited purpose to find out whether there exists any ground to proceed against the petitioner or not.

But, I find existence of no ground to proceed against the petitioners/A-1 &A-3 for the offences punishable under Sections 420, 120(B), 471, 447 and 384 of I.P.C. and consequently, the proceedings are liable to be quashed.

However, the observations made hereinabove, will have no bearing in the disposal of main C.C.No.319 of 2015 in respect of other accused and the Additional Judicial First Class Magistrate, Tadepalligudem, West Godavari is directed to pass appropriate order, uninfluenced by the observations made herein, if any.

In the result, the criminal petition is allowed.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed. No costs.

M. SATYANARAYANA MURTHY, J

Date: 03.01.2017
SP