

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 10176 OF 2013

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.11 of 2013 of Karimnagar I Town Police Station for the offence punishable under Section 420 IPC & 156(3) Cr.P.C.

The facts of the case in brief are that the second respondent filed a private complaint under Section 200 of Cr.P.C before the Additional Judicial Magistrate of First Class at Karimnagar alleging that the complainant has got five brothers. Out of them, the second brother by name Vidyasagar and his wife committed suicide, leaving behind one minor daughter and minor son. Therefore, the defacto complainant and the remaining brothers consulted among themselves about the minor children's maintenance and girl's marriage. During their discussion, a proposal was meted out that whoever undertakes to maintain the minor children and also girl's marriage, he should be given their ancestral piece of land i.e. 1/3rd share in the tin shed bearing No.4-2-14 located near clock tower, Karimnagar, towards expenses incurred by him for maintenance of children. As none of the brothers came forward to accept such proposal, ultimately the defacto complainant was compelled to take up the responsibility of maintaining the minor children and getting married the girl child, for which, 1/3rd share of land in the tin shed bearing No.4-2-14 located near clock tower, Karimnagar, was offered to him, and all

the brothers have agreed to the said proposal. Physical possession of land was given to the defacto complainant on 15.05.2008, as per family understanding. Further, the defacto complainant spent Rs.2 lakhs and performed the marriage of the daughter of his deceased brother. Thus, the defacto complainant became owner and possessor of 1/3rd share of the property belonging to all his brothers in the tin shed bearing No.4-2-14 located near clock tower, Karimnagar, which comes to 54 sq.yds. While the matter stood thus, A-1 & A-2 conspired together to deprive the defacto complainant's right in the valuable property consisting of 9.5 sq.yds in the tin shed bearing No.4-2-14 located near clock tower, Karimnagar to knock away the property of defacto complainant. Thus, the petitioner herein/Accused No.2 in collusion with Accused No.1 committed an offence punishable under Section 420 IPC. The complaint was referred to the police under Section 156(3) of Cr.P.C and the police registered Crime No.111 of 2013 on the file of Karimnagar I Town Police Station for the offence punishable under Section 420 IPC and issued FIR.

The present petition is filed on the ground that the dispute is purely civil in nature. If the sale deed in respect of the undivided share is executed, the remedy open to the petitioner is to file a civil suit. Filing such criminal case is nothing but abuse of process of the Court and prayed to quash the proceedings in Crime No.111 of 2013.

Admittedly, the property originally belongs to father of the defacto complainant i.e. Shankarayya who was blessed with six sons and out of them one Vidyasagar died leaving behind two

minor children. As none bothered to look after the welfare of those minor children, the defacto complainant was compelled to take up the responsibility of maintaining both the minor children and also performing girl's marriage, for which, he would be given ancestral property of $1/3^{\text{rd}}$ share in the tin shed bearing No.4-2-14 located near clock tower, Karimnagar. Accordingly the defacto complainant was given undivided share, as per their family understanding and he let out the same tin shed. The total extent of the property is 54 sq.yds. Out of 54 sq.yds, $1/6^{\text{th}}$ share comes to 9.0 sq.yds. When Shankarayya died intestate leaving behind his six sons, each son is entitled to $1/6^{\text{th}}$ share as per law. However, the contention of the defacto complainant is that additional $1/3^{\text{rd}}$ share was agreed to be given to the petitioner which comes to 18 sq.yds and accordingly given to him.

It is the contention of the complainant that in the document itself, the property is described as undivided share, but with specific boundaries in the schedule, the property was sold.

Learned counsel for the petitioner also fairly conceded that it is an undivided property and if any partition has taken place by metes and bounds, in such case, the purchaser though he is a third party will become a tenant in the common, but not the sharer and he is not entitled, to claim partition of the property. But he can claim equities in a suit filed by any of the coparceners or sharers. But, sale of undivided share in the property would not constitute an offence on its face of the allegations value punishable under Section 420.

Section 420 deals with cheating and dishonestly inducing delivery of property and it is defined as whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In **V.Y. Jose and another v. State of Gujarat and another**¹, the Apex Court highlighted the ingredients to constitute an offence punishable under Section 420 I.P.C in paragraph 14 and they are as follows:

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.”

Thus, the ingredients mentioned above would constitute an offence punishable under Section 420 and that there must be a

¹ (2009) 3 Supreme Court Cases 78

dishonest inducement and delivery of the property by a person so deceived. But, here, the property involved is sale for valuable consideration and therefore that would not attract any offence *prima facie* punishable under Section 420 IPC, since it is not the case of the complainant at any stage that at the time of sale itself, the petitioner induced any person, more particularly, the complainant to part with any property with dishonest intention.

In ***State of Karnataka v. L. Muniswamy and Ors.***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.”

In view of the law declared by the Apex Court in the above judgment, the alleged act committed by the purchaser of undivided share in the property would not constitute an offence for the reason that he did not induce any person to part with the property with dishonest intention. He purchased the property for valuable

² AIR 1977 SC 1489

consideration and he is entitled to claim right under Section 55 of Transfer of Property Act, being the purchaser under Section 54 of Transfer of Property Act. Therefore, the dispute is with regard to share in the property and at best, it is a dispute, in civil in nature. When the dispute is predominantly civil in nature resorting to criminal law by filing a private complaint and that would amount to abuse of process of the Court.

In **State of Haryana v. Bhajan Lal**³ the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex 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.

³ 1992 Supp. (1) SCC 335

(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.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance by abuse of process of the law.

In view of the law declared by the Apex Court, I find that the complaint is short of requirements under Section 420 IPC to constitute an offence and that apart, in view of the guidelines prescribed in **Bhajan Lal**'s case, the proceedings in crime are liable to be quashed.

In the result, the criminal petition is allowed by quashing the proceedings in Crime No.11 of 2013 of Karimnagar I Town Police Station, leaving it open to the defacto complainant to work out is remedy in appropriate Civil Court.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:21.03.2017

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