**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CRIMINAL PETITION No.16495 OF 2016**

**ORDER:**

1 This Petition, under Section 482 Cr.P.C, is filed seeking to quash the proceedings against the petitioner in C.C.No.767 of 2016 on the file of the Court of the Additional Judicial Magistrate of I Class, Tiruvuru, Krishna District.

2 The learned counsel for the petitioner submitted that it is a fit case to quash the criminal proceedings against the petitioner as the allegations made in the complaint are bereft of the ingredients of Sections 419, 420 and 427 of IPC. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, the lis involved between the parties is purely civil in nature, without any element of criminality. He further submitted that the second respondent, having lost the battle before the civil Court, resorted to criminal proceedings, which act of the second respondent is nothing short of abuse of process of law. It is his further submission that the learned Magistrate had taken the case on file under Sections 419, 420 and 427 of IPC without scrutinizing the material available on record in right perspective.

3 *Per contra,* the learned Assistant Public Prosecutor submitted that the material placed before the Court is prima facie sufficient to proceed against the petitioner.

4 The learned counsel for the second respondent strenuously submitted that the petitioner induced the second respondent and others to enter into the agreement of sale dated

04.11.2006 without having valid title to the schedule property. He further submitted that mere filing of civil suit does not preclude the second respondent to initiate criminal proceedings as the petitioner deceived the second respondent and others for unlawful gain. It is his last submission that the allegations made in the complaint are sufficient to proceed further against the petitioner.

5 The facts leading to filing of the present criminal petition are as follows:

6 The petitioner owned an extent of Ac.1-00 cents in R.S.No.232/2B of Nadim Tiruvuru village of Krishna district. The father of the petitioner purchased the said property under an agreement of sale dated 07.08.1982 from Panangipalli Mangathayaru. After payment of entire sale consideration the said Mangathayaru delivered possession of the property in favour the father of the petitioner on 15.01.1983. The second respondent and others namely P. Tulasi Das, V.Venkatarami Reddy and N. Venkata Ramarao entered into an agreement of sale with the petitioner on 04.11.2006 to purchase the property in question for a total consideration of Rs.14,50,000/- and paid advance amount of Rs.2.00 lakhs. As per the terms of the said agreement of sale, the second respondent and others have agreed to pay the balance sale consideration of Rs.12,50,000/- to the petitioner on or before 15.01.2007 and get the registered sale deed. For one reason or the other, the petitioner has not executed the sale deed in favour of the second respondent and

others. The second respondent and others have filed O.S.No.15 of 2007 on the file of the II Additional District & Sessions Judge, Vijayawada and the same was transferred to the Court of XV Additional District Judge, Nuzvid and renumbered as O.S.No.17 of 2013. After full-fledged trial the learned XV Additional District Judge allowed the suit on 11.03.2016 in part directing the petitioner herein to refund the earnest amount of Rs.2.00 lakhs to the second respondent and others together with interest at 12% p.a. from the date of agreement of sale dt:04.11.2006 till date of suit i.e. 29.01.2007 and thereafter at 6% p.a. from the date of suit till the date of realization. The second respondent alone filed complaint under Section 200 Cr.P.C on the file of the Court of the Additional Judicial Magistrate of I Class, Tiruvuru against the petitioner for the offences punishable under sections 419, 420 and 427 of IPC. The learned Magistrate recorded the sworn statements of the *de-facto* complainant, Vemireddy Venkata Rami Reddy, N. Venkata Ramana Rao and P.Nagalingam. Basing on the allegations made in the complaint and the sworn statements of the witnesses, the learned Magistrate has taken cognizance of the offences under Sections 419, 420 and 427 of IPC and issued NBW against the petitioner. Hence the present Criminal Petition.

7 The point that arises for consideration in this Criminal Petition is 'whether the allegations made in the complaint are prima facie sufficient to proceed against the petitioner or not?'

8 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

**Suresh vs. Mahadevappa Shivappa Danannava**[1]. As per the principle enunciated in this case, taking of cognizance of offence under Section 420 IPC by the learned Magistrate is not legally sustainable and is liable to be set aside if the complaint does not disclose the ingredients of Section 415 of IPC.

**Anil Mahajan vs. Bhor Industries Ltd. and Ors.**[2] Wherein the Hon'ble apex Court at para Nos.6, 8, 9 and 10 held as follows:

> 6. The order of the Magistrate was challenged before the Court of Session. The learned Additional Sessions Judge, Pune, by order dated 19-10-2001 has set aside the order of the Magistrate issuing process. It has been stated by the learned Additional Sessions Judge in the order that:
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> > In this case there is no allegation that the accused made unlawful representation. Even, according to the complaint, they entered into memorandum of understanding. Grievance seems to be that the accused failed to discharge obligations under the MOU. In the complaint, there was no allegation that there was fraud or dishonest inducement on the part of the applicant and thereby the opponent parted with the property.
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> Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.
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> 8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs. 3,05,39,086 out of the total amount of Rs. 3,38,62,860 was paid leaving balance of Rs. 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own case is that over rupees three

[1] (2005) 3 SCC 670
[2] (2005) 10 SCC 228

crores was paid and for balance, the accused was giving reasons as above noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

9. In *Alpic Finance Ltd. v. P. Sadasivan* {(2001) 3 SCC 513} this Court was considering a case where the complainant had alleged that the accused was not regular in making payment and committed default in payment of installments and the bank had dishonoured certain cheques issued by him. Further allegation of the complainant was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of *Nagawwa v. Veeranna Shivalingappa Konjalgi* {(1976) 3 SCC 736 wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused, and the circumstances under which the process issued by the Magistrate could be quashed, the contours of the powers of the High Court Under Section 482 Code of Criminal Procedure were laid down and it was held:

> 10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the Appellant is that the Respondents committed the offence Under Section 420 Indian Penal Code and the case of the Appellant is that the Respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the Respondents made any wilful misrepresentation. Even according to the Appellant, the parties entered into a valid lease agreement and the grievance of the Appellant is that the Respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the Respondents and thereby the Respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.
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> 11. Moreover, the Appellant has no case that the Respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. We are told that the Respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration. (Emphasis supplied by us)

10. We have examined the complaint and it is clear from its substance that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in Alpic Finance Ltd. case were rightly applied by learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions

> Judge had rightly set aside the order of the Magistrate issuing process to the Appellant.

**Thermax Ltd. and Ors. vs. K.M. Johny and Ors.**[3]

Wherein the Hon'ble apex Court at para No.37 held as follows:

> 37. It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that Appellant-Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the Appellant-Company amounts to a breach of contract.

9 Let me consider the facts of the case on hand in the light of the above legal principle.

10 There is no dispute between the parties with regard to the agreement of sale dated 04.11.2006 which is the root cause for filing of the present complaint. It is an admitted fact that the suit O.S.No.17 of 2013 filed by the second respondent and others was allowed in part on 11.03.2016. The trial Court has not granted the relief of specific performance in favour of the second respondent and others. However, the trial Court directed the petitioner herein to refund the advance amount of Rs.2.00 lakhs with interest. The complaint was presented on 06.06.2016 i.e. nearly three months after the judgment in O.S.No.17 of 2013. The fact remains that the second respondent filed the complaint nearly after 10 years of the agreement of sale. For

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[3] **(2011) 13 SCC 412**

better appreciation of the rival contentions, it is apposite to extract hereunder the relevant portion of the complaint:

> "In the said manner the accused as if he has got title to the property and obtained Pattadar pass book and title deed over the said land and received advance amount and the complainant and others are ready to pay the balance of consideration and demanded to execute the sale deed and with an evil moto and deceitful intention postponed the same and put the complainant and others into financial troubles. The accused is liable for punishment under Sections 468, 471, 427 and 420 read with section 34 of Indian Penal Code." (underlined by me)

11 The learned Magistrate, while taking cognizance of offences, passed the following order:

> "Complainant present. Heard the complainant and his counsel. Perused the complaint, affidavit, sworn statements of the complainant and other witnesses, copy of the judgment in O.S.No.15/2007 and other material. The record reveals that the accused entered into the agreement of sale with the complainant, obtained part of the sale consideration amount and refused to perform the sale, moreover it brings out that he entered into the agreement without having any title. Thereby it appears that there is prima facie material to proceed against the accused for the offence punishable under sections 419, 420 and 427 of the Indian Penal Code. Register as C.C. One of the offence alleged against the accused is cognizable and non-bailable offence and is a warrant case. Hence, issue N.B.W against the accused as contemplated under section 231 (1) (b) of the Code of Criminal Procedure and payment of process. Call on 28.10.2016." (underlined by me)

12 The gist of the allegations made in the complaint is that the petitioner was not having valid title to the property covered under the agreement of sale dated 04.11.2006 and that fact was concealed. The learned Magistrate has taken cognizance of the offences on the sole ground that the petitioner has not having title to the property covered under the agreement of sale dated 04.11.2006.

13 If really the petitioner has concealed the above said fact, he has no other option except to face the trial. If the stand taken by the second respondent is not prima facie supported by any material, forcing the petitioner to face the rigour of criminal trial is nothing but abuse of process of the court of law, which is not permissible under law. The dual object of Section 482 Cr.P.C is to prevent the abuse of process of law and to secure the ends of justice.

14 As observed earlier, both parties are not denying the recitals of the agreement of sale dated 04.11.2006. The only document which can throw some light on the controversy is the agreement of sale. It is not in dispute that the second respondent and others namely P. Tulasi Das, V.Venkatarami Reddy and N. Venkata Ramarao are parties to the agreement of sale. The recitals of the said agreement of sale are binding on the parties to it. A party to the document is not entitled to adduce oral or documentary evidence contrary to the recitals of a document in view of Section 92 of the Indian Evidence Act. It is apposite to refer to the recitals of the agreement, which read as under:

కృష్ణ డి, తిరువూరు సబ్.డి, తిరువూరు మండలం, నడిం తిరువూరు గ్రామంలో నాకున్నటువంటిన్నీ, నా తండ్రి గారు అయిన వెంకటరెడ్డిగారు లోగడ ది 07.08.1982 వ తారీఖున తణుకు గ్రామ కాపురస్థురాలు పాణింగిపల్లి రంగాచార్యులు గారి భార్య మంగతాయారు గారి వల్ల వ్రాయించుకొనిన అగ్రిమెంట్ ద్వారా కొనుగోలు చేసి దరిమిలా వారికీ చెల్లించవలసిన ప్రతిఫలం ది 12.12.1982 వ తారీఖున ఇచ్చిన వసూలు పూర్వకముగా ది. 15.01.1983 వ తారీఖున చెల్లించిన వసూలు పూర్వకముగాను, విక్రయ ప్రతిఫలం యావత్తు

పూర్తిగా చెల్లించి స్వాధీనం పొంది యున్నాను మరియు సదరు నా తండ్రి గారి పేరుతో గల స్వాధీన విక్రయ అగ్రిమెంట్ ననుసరించి నా పేరుతో పాస్ బుక్, టైటిల్ డీడ్ పొందియున్నాను. కానీ క్రయ దస్తావేజును వ్రాయించుకొని రిజిస్ట్రేషన్ చేయించుకొని యుండలేదు. తదాది నేటివరకు నా శాంతియుత అవిచ్ఛిన్నమైన స్వాధీనానుభవ సర్వ సంపూర్ణమైన యాజమాన్యపు హక్కు భుక్తములు కలిగియుండి, ఇతరులెవ్వరకూ ఏ విధమైన తనఖా క్రయం, హామీ, జప్తు, ఛార్జ్ వగైరా అన్యాక్రాంతములు చేసియుండలేదనన్ని, ఈ విక్రయాస్తిని బైండ్ చేయు హామీ, బాకీలుగాని, ప్రామిసరీ నోట్ బాకీలుగాని చెల్లదగు కోర్ట్ జప్తులుగాని లేని నిర్వివాదమైన నిచ్చేయమైన స్థిరాస్తియని నమ్మించినటువంటి ఈ దిగువ షెడ్యూల్ దాఖలా పూర్తి వివరములతో పొందుపరచిన ఎకరం 1 కి రూ.14,50,000 /- రేట్ చొప్పున ఎకరం కు ఐన మొత్తం రూ.14,50,000/- లకు మీకు విక్రయమించడమైనది. క్రయ ధనం రూ. 14,50,000/- లు (అక్షరాలా పధ్నాలుగు లక్షల యాబది వేల రూపాయలు) మింజుమలే ఈరోజున అడ్వాన్స్ రూపకముగా నగదుగా నాకు ముట్టిన రూ.2,00,000/-లు (అక్షరాలా రెండు లక్షల రూపాయలు) పోను ఇంకనూ నాకు ఇవ్వవలసిన క్రయ ప్రతిఫలం రూ.12,50,000 /- (అక్షరాలా పన్నెండు లక్షల యాబది వేల రూపాయలు) యావత్తు ది.15.01.2007 తేదీ లోపుగా నాకు పూర్తిగా ఇచ్చిన యెడల ఈ విక్రయాస్తిని మీ ఖర్చులతో ఈ క్రింద ఉదహరించిన రీతిలో నేనున్ను మరియు నాకు ఈ విక్రయాస్తిని విక్రయించిన విక్రయాస్తి హక్కు దారులతో కలిసి రిజిస్ట్రేషన్ చేయించుటకు బాధ్యుడనై యున్నాను.

15 A perusal of the agreement of sale clearly demonstrates that the petitioner informed to the second respondent and others that his father purchased the property under an agreement of sale and no regular sale deed was obtained by his father or himself. The petitioner himself has admitted that he has been in possession and enjoyment of the property in question under an agreement of sale only. A perusal of the agreement of sale clearly demonstrates that the petitioner agreed to execute the sale deed along with his vendors. Therefore, from

the recitals of the agreement of sale, it is clearly manifest that the second respondent and others have entered into the agreement with the petitioner knowing fully well that the petitioner was not having title to the schedule property. In such circumstances, concealment of factum of not having title to the suit property by the petitioner is absurd. The question of inducement or deceit by the petitioner is only an afterthought. The petitioner cannot be said to have any dishonest intention to cheat the second respondent and others at the time of entering into the agreement. The allegations made in the complaint are quite contrary to the recitals of the agreement of sale dated 04.11.2006, which is the basis for filing of the complaint.

16 Had the trial Court gone through the recitals of the agreement of sale, the finding of the trial Court would be otherwise. The lis involved between the parties is purely civil in nature without any element of criminality. If the proceedings are allowed to continue, it is nothing but abuse of process of law. Viewed from any angle, factual or legal, the second respondent miserably failed to prove the ingredients of Sections 419, 420 or 427 of IPC.

17 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to quash the criminal proceedings against the petitioner to secure the ends of justice.

18 In the result, the Criminal Petition is allowed, quashing the proceedings against the petitioner in C.C.No.767 of 2016 on

the file of the Court of the Additional Judicial Magistrate of I Class, Tiruvuru, Krishna District. As a sequel, miscellaneous petitions, if any connected to this Criminal Petition, shall stand closed.

**T. SUNIL CHOWDARY, J.**

Date:21-06-2017.
***Kvsn***