

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.10469 of 2017

ORDER:

This Writ Petition, under Article-226 of the Constitution of India, is filed by petitioners/accused Nos.1 and 2 in Crime No.116 of 2017 on the file of Mancheria Town Police Station registered for the offence punishable under Section-420 of the Indian Penal Code (for short 'I.P.C.') to issue a Writ of *Mandamus* by quashing the said proceedings on the ground that the dispute between the parties is purely relating to sale of immovable property and the civil litigation is given the cloak of criminal offence, which is nothing but an abuse of process of Court.

Admittedly, respondent No.3-Mohammed Wasiudduin lodged a report, dated 10.3.2017, with the Police, which was registered as a case in Crime No.116 of 2017 for the offence punishable under Section-420 I.P.C. The specific allegations made in the said report are that respondent No.3 entered into an agreement of sale with petitioner No.1 on 23.6.2015 for purchase of a house site admeasuring 345 square yards in Survey No.208 along with house bearing H.Nos.12-430 and 12-431 in Mancheria Village and Mandal, Adilabad District,

for an amount of Rs.93,15,000/-; that on the same day, respondent No.3 has paid an amount of Rs.4 lakhs as advance, on 31.8.2015 paid another sum of Rs.6 lakhs; and that as per the terms of agreement, petitioner No.1 has to execute registered sale deed on or before 22.10.2015 on payment of the entire sale consideration as agreed to be paid under the agreement of sale. It is further alleged that after payment of the first instalment of Rs.6 lakhs, petitioner No.1 was found missing and thereby, respondent No.3 could not pay the balance of sale consideration to obtain a registered sale deed; that on 08.02.2016, petitioner No.1 met respondent No.3, confessed that he committed a mistake and received Rs.15 lakhs from petitioner No.1 as second instalment while promising to execute a registered sale deed and had delivered the original sale deed on the same day to respondent No.3; that since 08.02.2016, petitioner No.1 was found missing, though he received a total amount of Rs.25 lakhs in two instalments including the advance amount paid on the date of execution of agreement of sale i.e., on 23.6.2015; that on enquiry, respondent No.3 came to know that petitioner No.1 executed a Gift settlement deed bearing No.12292/2016, dated 01.10.2016, in favour of respondent No.2, who is none other than his wife, and also mortgaged the property with Shriram Chits borrowing Rs.8,80,000/-; that when respondent No.3

questioned petitioner No.1, he openly proclaimed that he will not execute the registered sale deed and asked him to do whatever he likes. Thus, petitioner No.1 with a dishonest intention represented that he will execute a registered sale deed and made respondent No.3 to part with a huge amount and thereby, respondent No.3 was put to heavy loss. On the strength of the said complaint, the Police registered the aforesaid Crime against petitioner Nos.1 and 2.

Sri Arun Kumar Doddla, learned counsel for the petitioners, mainly contented that the remedy available to respondent No.3 is to file a suit seeking specific performance of agreement of sale in a competent civil Court, but he cannot proceed against petitioner Nos.1 and 2 for the offence punishable under Section-420 I.P.C. He further contended that petitioner No.2 is no way concerned with any of the acts of petitioner No.1, i.e., execution of agreement of sale, receiving the amount, making promise to execute registered sale deed, etc. Therefore, she cannot be prosecuted for the offence punishable under Section-420 I.P.C. and prayed to quash the aforesaid proceedings.

In support of his contentions, the learned counsel for the petitioners relied on the judgment of this Court in *J.Sesha Ratna*

*Kumari Vs. State of Andhra Pradesh and another*¹, wherein it is *inter alia* held that every breach of contract is not breach of trust or cheating and as such, no offence is made out against the petitioners but for it is a purely civil dispute.

On the other hand, Sri P.Lakshma Reddy, learned counsel for respondent No.3, contended that petitioner No.1 with dishonest intention made respondent No.3 to part with a huge amount on the pretext of execution of registered sale deed, but failed to execute the same, therefore, such an act would attract the offence punishable under Section-420 I.P.C.

Having considered the rival contentions of the learned counsel for both parties and on perusal of the material available on record, the point that arises for consideration of this Court is “whether the allegations made in the report, dated 10.6.2017, lodged by respondent No.3 on the file of Mancherial Town Police Station would constitute an offence, *prima facie*, punishable under Section-420 I.P.C.”

The undisputed facts of the case are that petitioner No.1 entered into an agreement of sale with respondent No.3 for purchase of a house site admeasuring 345 square yards in Survey No.208 along with house bearing H.Nos.12-430 and 12-

¹ 2016(1) ALD (Gr.) 481

431 in Mancherial Village and Mandal, Adilabad District for Rs.93,15,000/- and allegedly received a total sum of Rs.25 lakhs on three occasions inclusive on the date on which the agreement of sale was executed. But, petitioner No.1 did not execute a registered sale deed in favour of respondent No.3 by receiving balance sale consideration from the latter. On the other hand, he executed Gift settlement deed in favour of petitioner No.2 on 01.10.2016 and also mortgaged the said property with Shriram Chits for Rs.8,80,000/-.

The relationship between petitioner No.1 and respondent No.3 is vendee and vendor and the obligation between the parties is contractual in nature. When petitioner No.1 failed to execute registered sale deed, the remedy available to respondent No.3 is to file a suit for specific performance before the competent civil Court to enforce the terms of agreement between the parties. Execution of a Gift settlement deed in favour of petitioner No.2 on 01.10.2016 would amount to transfer of Property and according to Section-19 of the Specific Relief Act, 1963, respondent No.3 is entitled to proceed against the subsequent transferee i.e., petitioner No.2 and claim a decree against both the petitioners for execution of a registered sale deed so as to divest the title that vested in petitioner No.2.

As regards the contention raised by learned counsel for respondent No.3 that the aforesaid property was mortgaged by petitioner No.1 with Shriram Chits for Rs.8,80,000/-, it is to be noted that even if the aforesaid property is encumbered, it is for petitioner No.1 to redeem the mortgage from Shriram Chits and pass clear unencumbered title to respondent No.3. But, mortgaging the property with Shriram Chits and execution of Gift settlement deed in favour of petitioner No.2 subsequent to execution of the agreement of sale, dated 23.6.2015, would not constitute a *prima facie* offence punishable under Section-420 I.P.C.

Section-55(1)(g) of the Transfer of Property Act, 1882, reads as under:

“The seller is bound to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.”

Therefore, it is for petitioner No.1 to deliver the unencumbered property to respondent No.3 as per the terms of the agreement of sale.

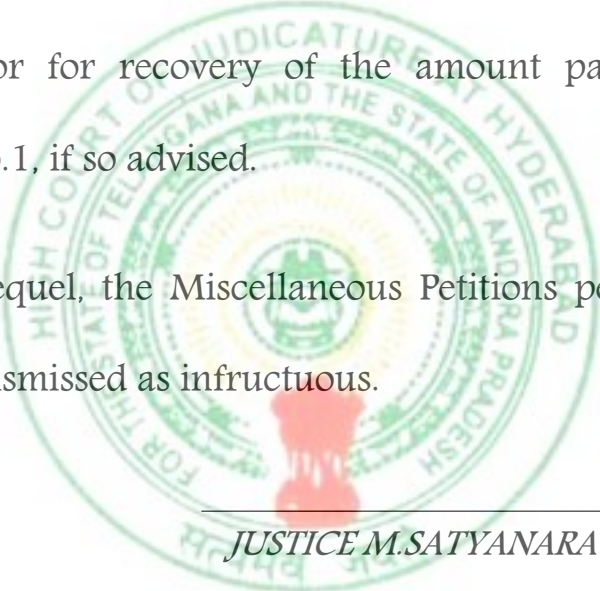
Coming to the allegations made in the complaint, there is absolutely no whisper that petitioner No.1 with a dishonest intention made any representation to respondent No.3 to part with huge amount as advance of sale consideration, but for the first time, such contention is raised before this Court during the arguments. In the absence of any allegation in the report lodged by respondent No.3 with the Police that petitioner No.1 had any intention to cheat respondent No.3 at the inception, the allegation made in the report would not constitute a *prima facie* offence punishable under Section-420 I.P.C. Therefore, even if the allegations made in the report if accepted to be true, it would not constitute an offence punishable under Section-420 I.P.C. On the other hand, a civil litigation is given cloak of criminal litigation and therefore, this Court can exercise extraordinary power vested on it under Article-226 of the Constitution of India and quash the impugned proceedings.

In view of the foregoing discussion, this Court is of the view that the remedy available to respondent No.3 is purely civil in nature and at best, the act committed by petitioner No.1 would amount to breach of contract which would not give rise to any criminal liability on the face of the allegations in the report lodged by respondent No.3 with the Police. Therefore,

Crime No. 116 of 2017 on the file of Mancherial Town Police Station is liable to be quashed, as it is a sheer abuse of process of the Court as it an arm-twisting method.

The Criminal Petition is, accordingly, allowed and Crime No.116 of 2017 on the file of Mancherial Town Police Station is hereby quashed. However, respondent No.3 is at liberty to file appropriate proceedings before the competent Court either for enforcement of the terms of agreement of sale deed, dated 23.6.2015, or for recovery of the amount paid by him to petitioner No.1, if so advised.

As a sequel, the Miscellaneous Petitions pending, if any, shall stand dismissed as infructuous.



JUSTICE M.SATYANARAYANA MURTHY

23rd November 2017

DR